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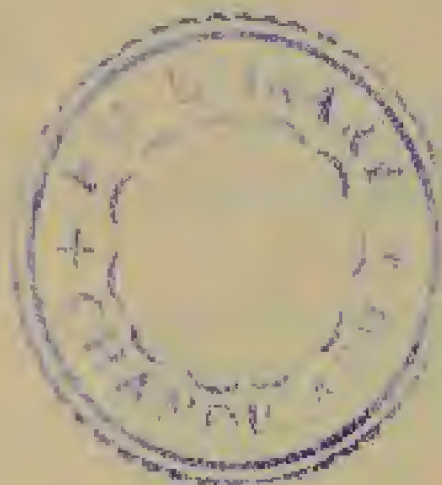
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HISTORY OF SIKH STRUGGLES

Volume III

Dr. Gurmit Singh



ATLANTIC PUBLISHERS & DISTRIBUTORS

Published by
ATLANTIC PUBLISHERS AND DISTRIBUTORS
B-2, Vishal Enclave, New Delhi - 27
Phone: 5413460

Sales office
4215/1, Ansari Road, Darya Ganj
New Delhi - 110002
Phone : 3273880

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Typeset at
APD Computer Graphics
B-2, Vishal Enclave, N. Delhi - 27

Printed in India at
Mehra Offset Press
New Delhi

Dedicated

To

Prof. Harbans Singh

(Chief Editor, 'Encyclopaedia of Sikhism')

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Preface to Volume III

In 1849 Sikhs ceased to be rulers of Punjab, as the British, after defeating them in Anglo-Sikh Wars, annexed their homeland. Since then the Sikh problem has remained alive in one form or the other, at national as well as international level, although Sikhs being a microscopic minority could not attract the attention of the people of the world to their struggle for restoration of autonomy to their homeland. The British had suffered a huge loss of life during the Anglo-Sikh Wars. Consequently, they were afraid of granting any powers to Sikhs and, therefore, they never made any serious attempt to study their problems and political demands. When the British left India, the Sikh problem acquired a new gravity because due to the migration of Sikhs from the newly-formed Pakistan to the Indian part of Punjab there came into existence, for the first time, a geographical zone, along the Indo-Pak international border, where Sikhs constituted a majority of population. The new rulers of India thus inherited the Sikh problem. Instead of trying to find a solution to the rapidly-growing discontentment among Sikhs, the Government of India condemned Sikh leaders as rank communalists and tried to suppress them. Thousands of Sikhs were imprisoned during the agitations which were launched for getting a zone where the Sikh identity was not threatened and where the Sikh culture and Punjabi language could find a congenial atmosphere for their natural, unhindered growth. Instead of going to the root of the problem, the Government of India followed the policy of "divide and rule" by manoeuvring divisions in the Sikh leadership. No attention was paid to the economic development of Punjab and industrialisation was denied on the ground of its being a border State. Even the existing opportunities of employment, such as agriculture, transport and military service, were taken away by imposing a ceiling on land holdings, bartering away its irrigation resources to the neighbouring States, nationalising transport, and curtailing Sikh recruitment to the army on the basis of population. The strategy was to keep Sikhs occupied with struggle for economic subsistence, so that they would not think

of political power. This policy, however, failed and the unemployed Sikh youth started getting alienated from the mainstream. Several of the constitutional devices evolved, and agreed to by Sikhs, such as the Sachar Formula, the Regional Formula, Linguistic Re-organisation etc. were not implemented by the Government with sincerity which resulted in a feeling amongst Sikhs that no solution to their problems and aspirations was possible within the framework of the present constitutional set-up in India, and their salvation lay in an independent sovereign State of Khalistan. This development has posed a real threat to the unity and integrity of the country and every lover of the country is anxious to suggest a solution to the Sikh problem. But, during the past four decades, intellectuals and pressmen have made no attempt to place the past developments and events in their true perspective and in a systematic manner so that a proper solution of the vexed Sikh problem could be found.

The present book, *History of Sikh Struggles*, was proposed to be published in four volumes, the third volume of which is in the hands of the readers. This volume provides a day-to-day historical account of the events starting with "Operation Blue Star" and ending with the Indira Gandhi murder case judgement. A maximum number of connected documents have been included in the volume to enable research scholars, journalists and intellectuals to make a comprehensive study of the subject and place the true picture before the public of India and the world at large.

"Operation Blue Star" (with which this volume opens), brought about a revolution in the Sikh psyche and gave a new direction to the Sikh struggle. Although a few publications have already appeared on the subject, the present volume is unique in the sense that it places in the hands of the readers the original, first-hand versions of the parties involved. The version of the Government of India as given in the White Paper published by it, the version of General Kuldeep Singh Brar, who led the army inside the Golden Temple, the version of a soldier who participated in the Operation, as well as the version of the investigating authorities who challaned those who were accused of resisting the entry of the army in the Golden Temple, have all been included in this volume. The volume also gives the reaction of various political parties by including in annexures the speeches of Members of Parliament in the House during the debate on the Punjab situation following "Operation Blue Star". Legal implications and Human Rights issues involved in "Operation Blue Star" have also been discussed. The volume also contains the complete judgment of Smt. Indira Gandhi's murder case. Amnesty

International Report on Punjab and many other rare documents have been included to make the book serve as an encyclopaedia on the Punjab problem.

As already mentioned, this volume covers the period starting with "Operation Blue Star" (June 1984) and ending with the Indira Gandhi murder case judgement. I have tried to give an objective account of the important events, with maximum details, that occurred during the aforesaid period. I have avoided analysing the events narrated in the three volumes, in order to keep the account wholly objective. However, this will be done in one separate volume of the book, and in that volume copious references will be made to various documents included in all the volumes.

I am thankful to Shri Bal Krishna, Former Secretary, Publication Bureau, Punjab University, Chandigarh, for extending his expertise in polishing the manuscript.

— (Dr.) GURMIT SINGH

Chapter 1

Operation Blue Star

On the 23rd March, 1984, Rajiv Gandhi, who was the General-Secretary of the All-India Congress Committee at that time, said, "I think we should not enter the Golden Temple, but it is a question of what is good balance. Today, as we see it, it is not as if the Sikhs are against the Hindus, and we should do nothing that separates them."¹

Home Minister, P.C. Sethi, told the Parliament, "We have never been in favour of sending the Police into the Golden Temple".² Similarly, in April, 1984, Mrs. Indira Gandhi informed the Parliament that "our Government would not send the police into the Golden Temple." However, in mid-April, the Union Government sent instructions to the State of Punjab that district authorities be permitted to call the army if the situation warranted it.³ But the K.G.B. intercepted at Abu Dhabi a conversation between C.I.A. agents and some Pakistan officials, revealing that some Sikhs intended to proclaim Khalistan from the Golden Temple on the 4th June, 1984. This changed the entire situation and it was decided to order army operation.⁴ Prime Minister Indira Gandhi later told the Parliament that after the fateful decision was taken it was for the first time in her life that she could not sleep at all.

'Operation Blue Star', the biggest and the most significant army action against own countrymen ever taken in the world, was the code name for the army's move into Punjab against the Sikhs. Planning for such an operation had been going on since long, and, in Chakrata, military Commandos had been trained in large numbers on a huge replica of the Golden Temple. Consultations were held with army generals frequently and by the end of May the decision to launch action was taken.⁵

On the 29th May, 1984, an agent of the K.G.B. informed Smt. Indira Gandhi on the hotline between the office of the Chief of the Indian Intelligence and the Prime Minister that establishment of Khalistan would be proclaimed from the Golden Temple in the

evening of the 4th June, and, immediately thereafter, an army of some forty thousand Sikhs including Muslims would invade India from the side of Wagah border between India and Pakistan. The same night Prime Minister held a secret meeting with the Chiefs of the army, navy and air force, and heads of the RAW and the Intelligence Bureau. It was decided to take action in Punjab.⁶

On the night of the 30th May, 1984, camouflaged army convoys of the famed 9 Infantry Division based at Meerut started converging on Amritsar and other key towns of Punjab.

President Zail Singh cancelled a visit to the North-east areas of India and the Army Chief, General A.S.Vaidya, was hurriedly recalled from Srinagar. In Amritsar itself the signals were even clearer. Para-military forces had been strengthened around the Golden Temple and heavy exchanges of fire with the followers of Bhindranwale, who had taken positions in the Golden Temple complex, some lasting seven continuous hours, took place with the obvious intention of letting those inside the complex expend their ammunition and reveal their newly-fortified positions.⁷

On June 1, 1984, curfew was clamped on the holy city of Amritsar. Within 24 hours, nearly 70,000 troops, called from the crack fighting formations of the army and para-military forces, took up predetermined positions in the streets of the town of Punjab and fanned out along the thousands of kilometers of roads that link the 12,168 villages in the State.⁸

On the 2nd June, All-India Radio as well as Television Services interrupted their programmes to announce that Smt. Indira Gandhi would make a special broadcast at 8.30 p.m. When 8.30 came there was a silence on the air. After two minutes announcers apologised for the delay in the Prime Minister's broadcast. Mrs. Gandhi eventually came on the air three-quarters of an hour late. She had made several last-minute alterations in the script.⁹

Mrs. Gandhi declared that the Government would put down terrorism and violence in Punjab and appealed to the Akali leaders to withdraw their non-cooperation agitation planned for the next day to stop movement of grain. She also outlined the framework of a settlement that could be reached on the Punjab problem. She, at the end of her speech, said : "To all sections of Punjab I appeal – do not shed blood, shed hatred". But the Prime Minister had already decided to shed blood, if necessary.

The die had been cast. Shortly after the broadcast, All India Radio announced that the army had been called into Punjab "in aid of the Civil Authority". All India Radio further announced that

Lt. General Ranjit Dyal, Chief of Staff, Western Command, would hold the key post of Adviser (Security) to the Governor of Punjab and that the police would be under the overall command of the army.^{9-A}

Simultaneously, the Government issued a series of Ordinances. Entry of foreigners into Punjab was banned; the media was gagged; rail, road and air services were suspended all over the State; and all communication channels were snapped.¹⁰

The President of India, Giani Zail Singh, who was (as every President is), by virtue of his office, Commander-in-Chief of the armed forces, was not even informed that the army was going to be sent into the Golden Temple.¹¹

The Golden Temple complex was encircled by the 12th Battalion of the Bihar Regiment which had moved into the area overnight. Army personnel also went up to the roof-tops of houses overlooking the Temple to join the CRPF and B.S.F. who had taken up positions behind sandbagged pickets. By the evening, however, the strategy had to be changed. The army commanders realised that the roof-top positions were much too vulnerable to grenade attacks from the pillboxes set up by the extremists atop the 18th century towers (called 'Bungas') and a water-tank inside the Temple complex.¹²

The men of the Bihar Regiment decided to set up new positions behind sandbagged windows in vacated houses around the Golden Temple. Men from the Garhwal Regiment and Brigade of Guards joined in a similar exercise later in the evening on the other sides of the Temple. Almost mechanically, patrols went about in a business-like fashion led by officers carrying binoculars, maps and note-books, and setting up machine-gun emplacements. Simultaneously, tanks rolled into sensitive villages leading patrols assigned the task of preventing communal killings.¹³

June 3 was the martyrdom anniversary of Guru Arjan Dev, the fifth Guru of the Sikhs. Hundreds of pilgrims had come to Amritsar for the auspicious occasion and most of them were within the precincts of the Temple.

On the same day, i.e. the 3rd June, Bhindranwale disclosed to his men the information that the government was planning to launch a massive operation. The option before them was either to surrender or to die fighting. Bhindranwale exhorted his men to die fighting.¹⁴

Inside the complex, the person in command on the side of Bhindranwale was Major-General Shabeg Singh, an officer who had organised 'Mukti Bahini' for liberation of Bangla Desh, but, instead

of being rewarded, he had been dismissed from the army on charges of corruption which could not be proved in Court.

The outer defences of Major-General Shabeg Singh included seventeen houses which were occupied by supporters of Bhindranwale in the alleys surrounding the Golden Temple, some of which were about 800 yards away from the Temple complex. These outposts were all in wireless contact with Shabeg Singh's command-post inside the premises of the Akal Takht. The Temple View Hotel, located near the temple, also gave the Sikhs an excellent vantage point to keep watch over the main entrance to the Golden Temple, as well as a clear arc of fire.¹⁵ Three towers inside the complex fortified by Bhindranwale's men were also excellent observation posts for watching the movement of troops in the narrow alleys surrounding the Temple.¹⁶

The army had estimated that it would be a psychological war, hoping that the military build-up would weaken the extremists' resolve. Officers went about asking the Sikhs on loudspeakers to surrender peacefully and avoid a blood-bath, but the warnings were greeted with automatic fire.¹⁷

Major-General Kuldeep Singh Brar ordered the artillery to blast off the tops of the three towers. However, he decided not to capture the seventeen houses because he did not have the resources to do so.¹⁸ It was only when Brar was convinced that the approaches to the Temple complex were clear that he ordered the tanks to move into the square in front of the northern entrance to the Golden Temple, known as the Ghantaghar entrance.¹⁹ Tanks were ordered to neutralise the fire from the walls of the Temple but even this effort did not succeed. By now it had dawned on the army top-brass that they faced a determined force charged with religious fervour and not an armed rabble.²⁰ Even attempts by the para-military commandos trained on the model of the Golden Temple to get into Bhindranwale's fortress were foiled.²¹

It was then that Major-General Kuldeep Singh Brar decided that he must launch a frontal attack on the Akal Takht. A Naik of the Kumaon Regiment, who participated in Operation Blue Star, narrated the events of the fateful night of June 5 and 6 as under :

"By June 5, Harchand Singh Longowal and G.S. Tohra had surrendered, but our main target was still in hiding. As the sun set, the commandos were busy working out a plan of action. After midnight a troop of 30 Jawans went forward, hoping to get nearer the Akal Takht. But they ran into heavy firing from the terrorists. Seventeen of our men fell to the rain of bullets

while the others lay on the parkarma injured. The next batch of 30 who went forward met with the same fate. The silence of the night was broken by the rattle of gunfire and the wailing of some of our jawans who lay helpless on the parkarma."

Further recounting the gory details, the Naik said:

"At this point of time General R.S. Dyal lost his cool and ordered that tanks be moved in. It was only after the tanks – seven of them – went into action that we got some sort of a hold over the extremists."²²

But, in the meantime, Major-General Brar had called up a Skot OT 64 armoured personnel carrier. But as this armoured personnel carrier approached the Akal Takht it came under fire from two Chinese-made rocket-propelled grenade launchers. One of the grenades found its target and the armoured personnel carriers was knocked out. The Captain commanding the platoon was wounded.²³ When General Brar realised that the enemy had armour-piercing weapons, he ordered the main battle tank of the army, the Vijayanta, to fire with its 105 mm gun. As many as eighty of high-explosive squash-head shells were pumped into Akal Takht.²⁴

Operation Blue Star was started on Guru Arjan's martyrdom day; and, as a result of the sudden imposition of curfew, an unusually large number of pilgrims were stranded. Moreover, there were also 1300 volunteers who had reached Amritsar to offer themselves for arrest under the leadership of Jathedar Nachhattar Singh. These included 200 ladies and 18 children.

According to S. Bhan Singh, Secretary of the S.G.P.C., who was an eye-witness to the entire operation, C.R.P.F. had started firing at the Golden Temple complex from all directions on the 1st June, 1984, which continued for the whole day. In the firing, one Kulwant Singh died at Baba Atal and five Sikhs were killed at Akal Takht. Due to this unmarked stray firing 32 bullet marks were noticed on the walls of the Golden Temple sanctorium.

On the 4th June, 1984 at 4.40 a.m. the sounds of machine-gun firing and cannon-fire were heard. Army operation had started without any previous warning. It continued the whole day and night till the evening of the 5th June, 1984. After 4 o'clock in the evening of the 5th the intensity of firing was reduced. At 5.15 p.m. two Sikhs came to the S.G.P.C. office from the side of Bagh Wali Gali, which is situated behind Guru Ram Das Sarai, and conveyed the message of S. Apar Singh, Deputy Superintendent of Police, that the army

had decided to stop firing from 4.00 p.m. to 5.30 p.m. so that pilgrims could manage to get out. When this message was conveyed to S. Gurcharan Singh Tohra and Sant Harchand Singh Longowal, they asked S. Bhan Singh, S. Abinashi Singh and S. Balwant Singh to get the time of cease-fire extended by another one hour so that ladies, children and other pilgrims could get out. But just then firing was resumed with greater intensity. During ceasefire about 40/50 armed Sikhs took positions in Guru Ram Das Sarai and started counter-firing. This diverted the firing by the armed forces towards Guru Ram Das Sarai and Teja Singh Samundri Hall. This firing and counter-firing continued during the whole night of the 5th June.²⁵

According to Giani Puran Singh, a priest of the Golden Temple, who was also an eye-witness of the events, on the 5th June, one tank entered the 'parkarma' of the Golden Temple complex at about quarter-to-eight in the evening and soon thereafter eleven more tanks entered the 'parkarma' and all the twelve tanks took position there. Rooms all-round in the 'parkarma' started burning. Firing made several big holes in the wall of Darshni Deorhi and the invaluable historic 'Chandni' presented by Maharaja Ranjit Singh to the Temple was burnt and reduced to ashes. Toshakhana was also burnt. Flames were seen in the Darshni Deorhi as well.

On the 6th June, bullets were piercing the inner and outer walls of the main Golden Temple. As soon as the singing of Asa Di Var in the Golden Temple ended, a bullet hit the singer, Ragi Bhai Amrik Singh, and another bullet hit the holy scripture Sri Guru Granth Sahib. By that time, canon fire had already demolished some parts of the Akal Takht. Two sewadars were also injured inside the main Golden Temple and some people crawled upto the Sarowar (*i.e.*, the holy tank) to bring water for them. Army officers entered the Temple sanctorium but found no firearms therein. By that time, Bhai Amrik Singh had already died. Giani Puran Singh was informed by these army officers that dead bodies of Sant Jarnail Singh Bhindranwale, Bhai Amrik Singh (President A.I.S.S.F.), Bara Singh and General Shabeg Singh were lying under the debris of the Akal Takht. When Giani Puran Singh expressed his desire to see their dead bodies he was refused permission.²⁶

According to Giani Sahib Singh, Head Priest of the Golden Temple, who was also an eye-witness, the firing by the security forces, which had been continuing since the 1st June, became intensive on the morning of the 4th June, 1984. Four Sikhs had died due to this firing near Darshni Deorhi. Another 3 dead bodies were lying in the Parkarma. The S.G.P.C. arranged their cremation.

During the Operation Blue Star, 350 bullets hit the main Golden Temple, while the Akal Takht was completely smashed. According to him, on the 7th June, there were heaps of dead bodies all round, including the dead bodies of ladies and children. Approximately 1000/1200 dead bodies were lying in the Parkarma itself. Army men were openly smoking in the Parkarma. Till the 20th June, it was not possible to enter the Golden Temple without covering the nose due to foul smell. all "Rumalas" (pieces of cloth used for covering the scripture, Guru Granth Sahib) had been burnt, and when Giani Zail Singh visited the Golden Temple, Giani Sahib Singh told him about it and Gianiji arranged replacement by the very next flight.²⁷

According to S. Bhan Singh, Secretary, S.G.P.C., the army entered Teja Singh Samundri Hall from the side of Guru Ram Das Sarai. Sant Harchand Singh Longowal, Gurcharan Singh Tohra and Bibi Amarjit Kaur were surrounded by two army officers each, who took them away towards Guru Ram Das Sarai. Soon, about 250 Sikhs collected in the courtyard of Guru Ram Das Sarai. Grenades were thrown on them from the roof-top of the Sarai, as a result of which Jathedar Bagga Singh, member of the Executive Committee of the S.G.P.C., one army personnel and a few Sikhs were killed. Jathedar Nacchattar Singh's leg was blown off and he died after 4 hours due to lack of medical treatment. The army retaliated with firing, as a result of which 30/35 Sikhs including ladies and children were killed and many more were injured. S. Raj Singh, Dayal Singh and Gurdarshan Singh, employees of the S.G.P.C., who were also injured, approached S. Bhan Singh, Secretary, S.G.P.C., with a request to arrange medical help for them. When S. Bhan Singh approached an army Major, he was ordering the shooting of 35/36 Sikh boys standing before him with their hands up. When S. Bhan Singh requested him for medical aid he became red with rage and removed the turban from his head and shouted shoot orders. S. Bhan Singh ran for his life and saved himself by hiding and managed to reach the room where Tohra and Longowal had been made to sit. The boys were shot dead at about 8.30 a.m. At 4 p.m. Sant Longowal and Tohra, along with ten others, were escorted out. The injured were crying for water. At about 4 p.m. some policemen of the Punjab Police came with drinking water and started serving it. They also started removing the injured who were about 120 in number.²⁸

According to S. Rajinder Singh, who leads prayer at the Golden Temple, the army removed their turbans and kirpans and tied their hands at their back with their turbans. They were taken towards

Dukh Bhanjani Beri side. They saw heaps of dead bodies all around. They were made to sit on the floor throughout the night.²⁹ The army men threw grenades in almost every room of the complex killing thereby about 500 men, women and children.³⁰

About 400 Sikh youths managed to escape from the side of Gurdwara Kaul Sar before the army operation started. They also asked Sant Bhindranwale to accompany them, but he declined, saying he will prefer to die fighting.³¹

According to Col. M.S. Sidhu, about 500 people had died before the military operation started and during the operation 119 military officers and Jawans were killed while 372 were permanently disabled. About 1500 people died inside the complex who had nothing to do with the terrorists.³²

A large number of pilgrims and devotees were arrested by the army authorities and handed over to the police. Later, a well-known social worker of India, Mrs. Kamla Devi Chattopadhyaya, filed a habeas corpus petition before the Supreme Court of India whereupon the court passed the order, "The children and women were obviously devotees and pilgrims and must have gone to the Golden Temple to offer prayers, when the army action took place on June 5. There does not appear to be any reason to detain them." When the issue came up before the Supreme Court on August 28, the Court asked the District Judges of Ludhiana and Amritsar to visit the jails in their cities to ascertain if there were any children there. The Government quietly released 230 women and children immediately from Ludhiana jail, but retained nine children, aged between one to 14 years because of the detention of their mothers, while 13 other children, between 2 and 16 years of age, were detained in jail even though no charges had been framed against them. The women had been arrested under Sections 107/151 Cr. P.C. but no court proceedings were pending against them.³³

The People's Union for Democratic Rights (PUDR) in its report said, "During the army action in the Golden Temple, there were many cases of indiscriminate killing of ordinary people, including unarmed women and children. The post-mortem reports state that some killed had their hands tied behind their backs. Those killed include 16 sewadars of Baba Kharak Singh from Gurdwara Dera Baba Sham Singh located 50 yards from the Golden Temple. Baba Kharak Singh is an old, revered Sant and a pacifist. On the 7th June, 1984, these 16 men, including 70-years old Joginder Singh and 18-years old Hardev Singh, were pulled out from the Dera. Their hands were tied behind the back and they were made to walk

through the streets of Atta Mandi and shot dead opposite the D.C.M. shop by B.S.F. personnel. Soldiers belonging to the Bihar Regiment and the B.S.F. also looted the store of the Dera and decamped with things worth Rs. 70,000 and half a kilogramme of gold.³⁴

Giani Sahib Singh, the Head Granthi of Harmandar Sahib, narrating the events from June 3 onward, told a representative of the 'Surya' magazine:

"Due to curfew about 6-7 thousand people were trapped within the Golden Temple complex. Almost all rooms within the complex and Teja Singh Samundri Hall as well as Guru Nanak Niwas and Guru Ram Das Serai were full. Most of the people who were staying there had their families with them. At about 4.45 on the morning of June 4, the army opened fire. In fact, they had been firing occasionally since June 1. Shelling continued throughout the day."³⁵

According to Giani Sahib Singh, there were 350 bullet marks on Harmandar Sahib.³⁶ Disbelieving the Government propaganda that the army had shown restraint to respect the religious sentiments of the Sikhs, S. Khushwant Singh, a well-known journalist, remarked, "This is Government's propaganda. Once the army was given marching and shooting orders, they carried out their duties with whatever efficiency they could. But I do not think that this bloodbath was necessary. Do you realise that more people died in the Golden Temple than at Jallianwala Bagh? The latter was a turning point in the freedom movement. Unfortunately, by conferring martyrdom on Bhindranwale and his followers, they have given impetus to the Khalistan movement."³⁶

Giani Kirpal Singh, Jathedar Akal Takht, Giani Sahib Singh, Head Granthi, Golden Temple, Giani Puran Singh, a granthi of Golden Temple, S. Bhan Singh, Secretary, S.G.P.C., and S. Ranjit Singh, Manager of the Golden Temple, were forced by the army authorities at gun-point to sign a statement that they have inspected Tosha Khana (Treasury) of the Golden Temple and everything except the canopy is intact and the ash of the diamond studded canopy has been preserved in a bag and has been sealed.

It was just a coincidence that just before the army action began in Punjab, the U.S. satellite KH-11 had moved into position to photograph all that happened on the ground in Amritsar.³⁷ The satellite remained there for several days and photographed all that happened.

In brief, the details of the damage caused to the Golden Temple in the military action, are as follows:

The historical building of Akal Takht had been razed to the ground. The sacred and historical palanquin, containing historical arms of the Gurus and Sikh martyrs, had been destroyed along with the arms. The gold of the gold-tipped arrows of Guru Gobind Singh had melted off. A number of buildings in the Golden Temple complex including the Langar, Library, and Guru Nanak Niwas had been destroyed. The Harmandir Sahib itself was fired at, as is borne out by a large number of pockmarks made by bullets. The holy volume of Guru Granth Sahib in the Golden Temple was pierced by a bullet. The 'Ilaichi Ber' in the holy tank was also destroyed. The two gold palanquins meant for carrying Guru Granth Sahib from the Akal Takht to the Harmandir Sahib and back everyday had been gutted. Gurdwara Baba Deep Singh in the Parkarma and the two clock-towers had been damaged. The Parkarma itself got submerged under the heavy weight of military tanks. The gold on the dome of the Akal Takht had melted and was looted. The precious diamond-studded canopy was reduced to ashes. The reference library and offices of the S.G.P.C. were destroyed besides other devastation in the complex.^{37-A}

On the 8th June, 1984, even as sporadic firing continued within the Temple complex from the Teja Singh Samundri Hall and also from the S.G.P.C. building, President Giani Zail Singh visited the Golden Temple and ordered the repair of the damaged sections of the Akal Takht and the Darshni Deorhi.

Sniping continued even after the Operation Blue Star was over. When President Zail Singh visited the Temple snipers opened fire and hit the Commandant of the commando battalion standing just a few yards away. Giani Zail Singh smiled wryly as the commandos colonel saw a bullet slip off his bullet-proof arm and kept walking coolly till the end of the Parkarma.³⁸ But the Giani was charged by Sikh head-priests of violating Sikh tenets by entering the Golden Temple with socks on and with an umbrella over his head. But the Giani appeared before the head-priests and sought their forgiveness. He was forgiven after his picture walking in the Temple without socks and without an umbrella was shown to the priests.³⁹

But the Operation Blue Star did not accomplish what the army action was intended to. If the purpose was to extinguish the flames of communal hatred, it was not achieved because Punjab continued to burn with greater intensity. There resulted a virtual split between the two communities. While the army action came as a relief to Hindus it struck a painful blow at the very head of Sikh sentiments.⁴⁰ The Sikhs were alienated from the national mainstream. The marks

left by the bullets which slit the gold-plated exterior of Harmandir Sahib left unforgettable pain in the Sikh mind which cried for revenge. Sikh mothers willingly offered their sons to the cause of liberating the Golden Temple and avenging the desecration of their shrine.⁴⁰ The Sikhs disliked the army and waited for an opportune time to strike.⁴¹

For the first time in the history of Independent India, Sikh soldiers mutinied to express their resentment against Operation Blue Star.

The first reports came from Sri Ganganagar in Rajasthan. About 300 Sikh jawans, posted at the Lalgarh cantonment, deserted with 13 military vehicles mounted with machine-guns. En-route they shot a constable, Puran Singh, of the Rajasthan Armed Constabulary.

The largest desertion took place in the Ramgarh Training Centre for the Sikh Regiment, Bihar, from where 1442 armed deserters fled in jeeps, tongas, trucks and buses of the State Road Transport Corporation.

At Ramgarh, the mutineers were led by a sepoy, Giani Gurnam Singh. First they sought permission of their commandant, Brigadier S.C. Puri, to proceed to Amritsar on June 9, 1984 after they heard that the Golden Temple had been defiled. Their demand was turned down and in anger they refused to take their food that night. The soldiers prepared a plan at night and the next day they broke open the armoury, armed themselves, shot dead the C.O. and injured the Deputy Commandant, Col. Jagdev Singh and Lt.-Col. H.S. Cheema, and left for Amritsar.

Two hundred jawans fled from Tripura, 160 from Pune, and some from West Bengal and Uttar Pradesh. The army and paramilitary forces managed to nab most of them en-route, and those who refused to surrender were killed in encounters. From the deserters of Ramgarh alone, 1003 rifles, 36 light machine-guns, 55 sub-machine-guns, and about 5000 rounds of ammunition were seized. The deserters were apprehended at various places including Varanasi, Allahabad, Jaunpur, Mirzapur, Nowgong and Lala Bazar on June 11, 1984.⁴²

The Commandant of the Sikh Regimental Centre, Brigadier S.C. Puri, was killed by the mutinous troops and the Deputy Commandant Col. Jagdev Singh and Lt. Col. H.S. Cheema were among those injured. But in spite of that, Col. Jagdev Singh and Lt. Col. Cheema were tried under sections 37 and 63 of the Army Act for failing to use their utmost endeavour to suppress mutiny, and

for failing to take note of the simmering discontent among the troops, and for being unable to exercise proper command and control. Two separate G.C.M.'s in June, 1987 sentenced Lt. Col. Cheema, the Administrative Battalion Commander, to undergo rigorous imprisonment for four years and Col. Jagdev Singh, the Deputy Commandant of the Centre, to undergo one year's simple imprisonment. Both were cashiered from the Army. But the Army Chief, who is the final confirming authority, reduced the punishment of Lt. Col. Cheema to three years' loss of service towards promotion and pension and Col. Jagdev Singh's punishment to two years' loss of service towards promotion and pension.⁴³

While unofficial sources believed that more than 8000 soldiers were involved in this emotional outburst, the army's official announcement put their number at only 2733. The official press release said that 67 deserters were killed during their engagements with other troops and the police, while another 30 were reported missing. This left a total of 2636, but courts of inquiry were held against 2606 only. The fate of the remaining 30 is not known. Of these 2606, courts exonerated 172, leaving behind a total of 2434. But the press release declared that a total of 2337 were left who were found to be guilty of desertion or mutiny and allied offences. This left a gap of 97 persons whose fate remained unknown. Of these 2337, about 900 soldiers were rehabilitated within the army, though they were transferred to other units. Another 237 were discharged from the army but were enrolled in the Defence Security Corps. A total of 858 soldiers, who had been found guilty and sentenced, were sent to reformatories near Hyderabad as a part of a unique treatment adopted for the first time in India. At the end of their punishment period they would be considered for retention in the army. Fifty soldiers were sentenced to varying terms of imprisonment ranging from one year to 14 years R.I. But the confirming authority found three of them not guilty. Only one soldier was sentenced to life imprisonment. Thus, in the official release, nothing was said about 392 persons who do not figure in the lists of those jailed, rehabilitated, to be absorbed eventually, or discharged.⁴⁴

When about 8000 Sikh soldiers of the Indian army were being tried by general and special courts-martial at various centres of the country on the charge of "waging war against the state", some intellectuals and experts on military affairs prayed for display of sagacity and compassion in dealing with these Sikh soldiers who had become emotionally surcharged when they heard that units of the Indian army had invaded the Golden Temple complex and destroyed

the Akal Takht – the two shrines held in the highest reverence by all Sikhs throughout the world – and that their women in Punjab were being raped. According to these experts, the reaction of the Sikh troops to the army action in the Golden Temple was spontaneous and they were emotionally surcharged to the extent of going beyond human endurance and control. The trial and punishment of these soldiers, according to these experts, would make them martyrs and bitterness among Sikhs would be intensified.⁴⁵ These experts referred to the arguments advanced by Mr. Bhulabhai Desai during similar trials held in India during 1945-46 against the officers of the Indian National Army. The fundamental point of Bhulabhai Desai's arguments was that "a nation or part of a nation does reach a stage where it is entitled to wage war for its liberation and acts done by persons acting as a part of a nation which was fighting for its liberation would be immune by reason of International Law, from being an offence under the municipal law of the country."⁴⁶ According to these experts, Lord Auchinleck, the Commander-in-Chief, in his report to the Viceroy, had recommended the remission of sentences imposed on the I.N.A. officers on the ground that "the accused might have acted in good faith, however wrong they may have been by our standards in forsaking their original allegiance. It is quite obvious that this is the general opinion held in India, not only by the public but by a considerable part of the Indian army as well. I believe that to confirm the sentence of transportation on these two officers would have the effect of making them into martyrs and intensifying the political campaign of bitterness and racial antipathy."⁴⁷

On the other hand, some people like Vice-Admiral M.P. Awati, pleaded for exemplary punishment to these Sikh soldiers. According to him, "What some Sikh troops did in Ranchi, Pune and a few other places on the basis of 'Bluestar' was MUTINY – in capital letters. A mutiny is defined as organised mass indiscipline against lawfully established authority in an armed force and the mutineers must receive exemplary punishment. In upholding the cause of authority and discipline, I do not, for a moment, condone what must have been slackness and complacency on the part of authority in containing the spread of poisonous disinformation by interested parties through Sikh Lines and Barracks in those days."⁴⁸

On the 1st July, 1984, General A.S. Vaidya, Chief of the Army Staff, announced on the radio that the persons who had acted in a mutinous manner would be dealt with severely under the Army Act. The Sikh mutineers objected to Court Martial proceedings against

them till General Vaidya retired, since the Courts Martial had been constituted under his power and order. They demanded trial by a court outside the purview of the Army Act.

However, a court of inquiry, instituted by army to investigate the mass desertion of Sikh troops from the Sikh Regimental Centre, Ramgarh, in Bihar, on June 10, 1984, laid the blame squarely on the centre's officers who had failed to gauge the apprehensions and uncertainty amongst the soldiers due to inadequate reports on the state of events in Punjab immediately before and after Operation Blue Star. Inadequate media coverage of events in Punjab, aided by rumours that women in Punjab were being molested by soldiers, contributed to a situation of mistrust in the minds of the Sikh troops in Ramgarh, a fact which resulted in a provocation to go to Punjab to protect both their women-folk and the Golden Temple.

The court of enquiry report goes on to say that all ranks of the Sikh Regimental Centre belong primarily to Punjab which they frequently visit. Here they intermingle with the locals and are a part of the mainstream of cultural, ethnic and political activities of the state. The emergence of religious fundamentalism and linguistic chauvinism in Punjab would have its fall-out on troops from there even when they are nationally integrated in an organisation like the army. The court also admits the subversive role of the tapes of the militant Sikh leader Bhindranwale's speeches which had found their way into the barracks well before June.⁴⁹

Discontent amongst the Sikh soldiers had been growing for the last several years and Operation Blue Star only proved the last straw. There is a general feeling among the Sikh armed forces personnel, both serving and retired, that India will never have a Sikh Chief of Army Staff. The Govt. ignored General Kulwant Singh for appointment as Chief of the Army Staff, although he was considered to be the most brilliant officer in the Indian Army by the British. Then came the turn of General Harbaksh Singh, who had even sent his baggage to Delhi, only to be told at the last minute that he was not going to make it. Then it was General J.S. Aurora, who has commanded the maximum number of troops in a war. He too was passed by.⁵⁰

The introduction of the rule laying down that recruitment would be made in proportion to the population of a state had also caused considerable resentment among the Sikhs who constituted a third of the Indian armed forces before 1947 and whose strength was being progressively reduced to 2 per cent. The army is the most important

source of livelihood after agriculture for the Sikhs and as such this recruitment policy has not only adversely affected the state economy but also hurt the Sikh psyche.⁵¹

Another reason for discontent was that the Sikh Regiments were being slowly disbanded and their soldiers were being distributed amongst various other regiments to dilute the concentration of the Sikhs. Even in Sikh Regiments they preferred to post Hindu Officers rather than promote Sikhs.⁵²

The insulting behaviour of the Haryana Police towards Sikh servicemen during the Delhi Asiad hurt their self-respect and they organised an ex-Servicemen's convention at Amritsar on the 23rd December, 1982, a few days after the Asiad was over. It was attended by about 10,000 Sikh retired service personnel, including half a dozen Major Generals, and many Brigadiers, Colonels and Majors. Several of them had been victims of the crude "search and seizure" antics of the Haryana Police.⁵³

The servicemen could not remain unaffected by what happened to civilians in their community especially since their service life is short and they generally retire in the prime of life. These soldiers joined Bhindranwale's movement not as soliders but as Sikhs because their emotional chords had been touched.⁵⁴ The government should have known about this possible reaction on Sikh soldiers before launching Operation Blue Star, particularly in view of the fact that when the police had entered the Golden Temple during the Chief Ministership of Bhim Sen Sachar, to arrest Akali leaders who were organising agitation for Punjabi Suba from the Akal Takht, some Sikh soldiers had held a secret meeting about which the Government was informed by its intelligence agencies. The situation was, however, defused by the public apology tendered by Bhim Sen Sachar and by his subsequent resignation from the Chief Ministership.

In fact, the Sikh soldier draws inspiration from the Khalsa of Guru Gobind Singh and the Khalsa army of Maharaja Ranjit Singh. Pleading the case of Sikh soldiers who had left their lines, Lt.-General Harbaksh Singh (Retd.), the senior-most officer of the Sikh Regiment and Colonel of this Regiment for the longest period of 20 years (1951-1971), said that the Sikh soldier is nurtured on his religious tenets and old traditions which have been fully approved and supported by the army and the Government of independent India. Before being inducted into the army as trained soldier he takes the oath of allegiance at a ceremonial parade by physically touching with both hands the Guru Granth Sahib, which is displayed

in the parade for the purpose. Thereafter he is led to the Regimental War Memorial, which, again in this case, embodies the Sikh insignia 'Chakra and the Khanda' – the coat of arms of the Khalsa – and ceremonially repeats and adopts, as his own, the vow taken by Guru Gobind Singh at the time of taking up the sword of righteousness against Moghul oppression. The vow reads :

"Deh shiva bar moh chey

.....

.....

.....

The official motto of the Regiment – "Nische Kar Apni Jeet Karon" is taken from this vow and it is enjoined on every soldier and officer of the Regiment to memorise this vow and act upon it. The War Cry of the Sikh soldier – "Bole So Nihal – Sat Sri Akal" is a legacy from the Khalsa of Guru Gobind Singh. The Chakra of the Khalsa coat-of-arms forms part of the Regimental badge and is embossed on the letter-head of the Regiment. A full-size Chakra adorns the turban of the Sikh soldier in his ceremonial dress. A gurdwara in the barracks, which is built by Kar Sewa, is a must for a Sikh battalion. Kirtans and prayers are held and gurpurabs are celebrated there with great enthusiasm. As Operation Blue Star was started on the day of Guru Arjan Dev's martyrdom, it was but natural that Sikh soldiers should have reacted with greater spirit of self-sacrifice to defend their faith and its tenets.⁵⁵ These troops did not desert under any political ideology but under unprecedented and extreme religious provocation.

Lt.-General Harbaksh Singh's above view is supported by historical records. According to a memorandum prepared in 1911 by D. Petrie, a senior British Intelligence Officer, which is countersigned by the then Director, Criminal Intelligence, C.H. Cleveland, which forms part of Home/Political Records of the Government of India :

"At the present time one of the principal agencies for the preservation of the Sikh religion has been the practice of military officers commanding Sikh regiments to send recruits to receive baptism according to the rites prescribed by Guru Govind Singh. Sikh soldiers too are required to adhere rigidly to Sikh customs and ceremonies and every endeavour has been made to preserve them from the contagion of idolatry. Sikhs in the Indian Army have been studiously 'nationalised' or

encouraged to regard themselves as a totally distinct and separate nation: their national pride has been fostered by every available means and the Granth Sahib or the Sikh Scriptures are saluted by the British Officers of the Sikh Regiments. The reason for this policy is not far to seek. With his relapse into Hinduism and re-adaptation of its superstitious and vicious social customs, it is notorious that the Sikh loses much of his martial instincts and greatly deteriorates as fighting machine..... The policy pursued in the Indian Army has been directed and rightly directed to the maintenance of Sikh faith in its pristine purity, for the reason that any falling off from orthodoxy not only detracts from the fighting value of the Sikh soldiers but inevitably tends at the same time to affect adversely his whole attitude to the British power."

Lt.-General Jagjit Singh Aurora (Retd.) also pleaded for minimum punishment to these soldiers to avoid bitterness for the future. According to him, even in the closing stages of World War II, many desertions took place, but the British Government decided not to take such a strong view about them because they realised that the war was ending and they did not want to create bitterness.⁵⁶

What is the impact of Operation Blue Star and the subsequent Sikh soldiers' revolt on the army? The Sikh Officers refuse to acknowledge that anything has changed. However, according to keen observers, things are not the same. Lt.-General Dyal, who was incharge of Operation Blue Star, aged atleast 10 years in the next six months after the Operation.⁵⁷ Some Sikh junior officers and men even avoid saluting Hindu officers.⁵⁸ According to another knowledgeable source, the feeling of resentment amongst the Sikh troops is much more widespread than the army authorities would like to admit.⁵⁹

Operation Blue Star was followed by Operation Wood Rose, which was launched by the army as a combing operation in the Punjab countryside. This operation only whetted extremism. Harassment of innocent people further alienated the Sikhs. Those in their teens and early twenties suffered the most which made their impressionable minds more susceptible to the separatist viewpoint. The police and the security forces not only antagonised the students but also the teaching community. In Batala and Amritsar, homes of professors and school principals were searched. An instant uproar was raised by academicians who otherwise could have helped the authorities to keep tab on trouble-makers. The feeling that even their teachers have not been spared made the students restive and

the conditions in Punjab rapidly became ripe for large-scale insurgency.

Ruling party Congress (I) stage-managed demonstrations outside the B.B.C. office in New Delhi. These demonstrations were led by Lalit Maken, Harcharan Singh Josh, Satish Handa – all small-time Congress-I hangers-on. The Indian Government protested to the British Government and Independent Television and secured apologies.⁶⁰ The fault of the B.B.C. was that it had broadcast news about “army attack” on the Golden Temple and “siege of the Temple”, and mutiny by the Sikh soldiers, in spite of the fact that there was complete censorship on such news in India. It had also broadcast an interview with Dr. Jagjit Singh Chauhan, self-proclaimed President of Khalistan, who, giving his reaction to the army attack on the Golden Temple, said that assassination of Indira Gandhi would be a historic inevitability now.

Summing up the Sikh mood after Operation Blue Star, the ‘Probe India’ observed:

“Punjab seethes, it still simmers with anger, which frequently erupts in violence. Many Sikhs in their agony and anguish over the defiling of the temple no longer consider themselves Indians and are spoiling for revenge against the Indian Government’s oppression.”⁶¹

On the 18th June, 1984, Simranjit Singh Mann of the Indian Police Service resigned from his job in protest against Operation Blue Star. Khushwant Singh gave a lead when he returned his ‘Padma Bhushan’. Sikh historian Dr. Ganda Singh, journalist Sadhu Singh Hamdard, social worker Bhagat Puran Singh and Dr. Khushdeva Singh also returned the awards conferred on them by the Indian Government. On the 19th June, 1984, Harinder Singh, Charge d’Affaires in the Indian embassy in Norway, sought political asylum in that country. Maharaja Amrinder Singh of Patiala, a ruling Congress (I) M.P., resigned from the party as a protest. In July, 1984, a prominent Congressman, S. Gurcharan Singh Johar, made a vain bid to immolate himself in Jalandhar to mark his protest against the army action in the Golden Temple and was admitted in Civil Hospital in a precarious condition.⁶²

S. Buta Singh, Minister for Parliamentary Affairs, announced at a press conference in Amritsar, on the 19th June, 1984, that the army would be withdrawn from the Golden Temple the next day and the work of repairing the Temple would be entrusted to the S.G.P.C. This announcement was, however, contradicted by the Cabinet Secretariat at New Delhi within a few hours.

As a result of Operation Blue Star, the underground Sikh resistance started picking up. On the night of June 5-6, 1984, when the army was entering the Golden Temple, about a dozen Sikh youngmen breached the bricklined Bhakra main line between the bridge connecting Chandigarh with Ropar and the Budki rivulet syphon by making a 3 feet by 5 feet cut in the embankment with spades. Within a short while the gap widened to 1600 feet due to water pressure in the canal which was carrying 1100 cusecs of water at that time. As a result of this breach in the canal, Haryana, which was dependent on the canal for drinking water and irrigation, suffered miserably till the 7th July, when the breach was repaired. However, on the 21st July, 1984, the Bhakra Canal was breached again.

On the 6th July, 1984, an Indian Airlines plane was hijacked to Lahore by a suicide squad of the A.I.S.S.F.

On the 10th July, 1984, the Government of India issued a White Paper on Punjab. According to Mr. A.G. Noorani, noted political analyst, the paper did not answer any of the pertinent questions arising out of the Punjab crisis that baffled layman and commentator alike. Like most government documents, it was a blatant attempt to whitewash government errors and administrative malfunctioning.⁶³

As a matter of fact, the White Paper was just a tissue of lies. The White Paper blamed the extremist movement for the deterioration of the situation and maintained that throughout the negotiations the Government's attitude was one of accommodation of all reasonable demands.⁶⁴ But this assertion of the Government is falsified by the eminent Hindu journalist, Mr. Kuldip Nayar, who wrote, "When the agitation began nearly two years ago, it was led by reasonable men seeking a reasonable settlement of reasonable demands, and at least three times there were prospects of agreement at the negotiating table, but each time Prime Minister Indira Gandhi sabotaged the agreement."⁶⁵

Another highly respected Hindu journalist, Mr. Pran Chopra, remarked :

"The Akali Dal (the Sikh Organisation) is in the hands of moderate and sensible leadership, which is less ethnocentric than any it has had before. But giving anyone a fair share in power is unthinkable politics for Mrs. Gandhi. Many Hindus in Punjab privately concede that there isn't much wrong with these (Sikh) demands. But every time the ball goes into the Congress court it is kicked out one way or another because Mrs. Gandhi considers it a good electoral calculation."

There was a non-violent Sikh protest movement, but it was eclipsed when the Prime Minister turned down Sikh demands. While, on the 2nd June, 1984, Mrs. Indira Gandhi was appealing in her broadcast to heal wounds and for restoring normalcy and harmony in Punjab, her army tanks were rumbling in the Sikh Homeland to unleash a holocaust.

The army operation, according to the White Paper, was carried out with the aim of flushing out terrorists. At no given time did New Delhi put their number at more than 300 in the entire State. To get hold of them, the Government employed more than 1,00,000 army personnel, backed by tanks, field-guns, helicopter gunships and other heavy armour. For five days the Punjab was cut off from the rest of the world. All telephone and telex lines were cut. No foreigners were allowed entry and all Indian journalists were also expelled. There was no newspaper, no trains, no buses – not even a bullock-cart.⁶⁶

On the 15th July, 1984, the Central Government assumed powers through an Ordinance to establish special courts in terrorist-affected areas to try certain specified offences. On the 24th July, 1984, Punjab was declared a terrorist-affected area.

On the 10th August, 1984, the Government amended Article 356 of the Constitution to enable it to extend the President's Rule in Punjab by one more year. (The state had been placed under President's Rule on the 6th October, 1983.)

On the 29th July, 1984, a World Sikh Convention, held at Madison Square Garden of New York, condemned Operation Blue Star and declared that the army action had burnt the bridges between Punjab and the rest of India. The participants pledged to work for a sovereign Sikh state. It also decided to set up a secretariat for that purpose and appointed Major-General Jaswant Singh Bhullar as its Secretary-General and nominated a committee of 40 Sikhs representing the Sikhs of U.S.A., Canada and other European countries, besides India. It called upon Sikhs to boycott General Dyal and General Brar who had led the army action in the Golden Temple. It also requested the Sikhs not to travel by Air India.⁶⁷ The slogans "Khalistan Zindabad" and "Bhindranwale Zindabad" rent the air.⁶⁸

On the 24th August, 1984, another Indian Airlines plane Boeing 737 (Flight No. 421), flying from Delhi to Srinagar, was hijacked by some Sikhs to the United Arab Emirates. However, two days later, the passengers returned safely.

On the 21st September, 1984, the Supreme Court ordered the Union Government and the army to release all children under 14 and women detained in Amritsar jail after Operation Blue Star.

In pursuance of the ultimatum that was decided by the Sarbat Khalsa held on the 2nd September, some Sikh organizations again issued the ultimatum to Delhi on the 23rd September, 1984, that if the army was not withdrawn from the Golden Temple by September 30, they would take over the Temple. Two days later, the Government withdrew the army from the Temple. One day after, repairs in the Temple complex were completed. But on the 1st October, 1984 the Army re-entered the Temple and rounded up 300 persons. The Sikhs were observing thanks-giving to God for restoring the Golden Temple to the Sikhs after Operation Blue Star. About 300 Sikh youths occupied the stage and shouted pro-Bhindranwale and pro-Khalistan slogans. They hoisted a Khalistan flag atop the golden dome. The tumultuous reception they received from the assembled crowd upset the government, and therefore, the army re-entered the Golden Temple.⁶⁹

On the 9th October, 1984, the Security forces finally pulled out of the Temple after handing over the complex to the S.G.P.C.

The S.G.P.C. later filed a civil suit in the court of the Senior Sub-Judge, Amritsar, against the Union of India and 34 others, including 19 Central Ministers and 15 senior military and civil officials (including the Chief of the Army Staff, General K. Sundarji), claiming rupees one thousand crores as compensation for the extensive damage caused to the Golden Temple and other Gurdwaras in Amritsar. It also asked for a direction by the Court to the 34 respondents to tender a personal apology to a Sikh 'sangat' (congregation) for the anguish caused by the Operation Blue Star.

But the Union of India moved a transfer application alleging that it apprehended danger to the lawyers representing it. It further alleged that some of the events in the past few months, such as the declaration of Khalistan from the Golden Temple complex and the rising number of violent incidents, add to its apprehension that a fair and impartial trial was no longer possible in Punjab. On this petition, the Supreme Court stayed the proceedings before the Senior Sub-Judge, Amritsar.⁷⁰

The army action was widely criticised. The Marxist leader, E.M.S. Namboodripad, said, "The army action in Punjab is unfortunate and one that could have been avoided." Janta Party President, Chandra Shekhar, said, "It is deplorable that instead of resolving the Punjab tangle through negotiations the Centre has taken the help of the army. The use of coercion is not an answer to the problem in a democratic set-up. I cannot support a foolish action of the Government." The B.J.P. leader, Atal Behari Vajpayee, said, "Congress (I) Punjab policy has gravely impaired national unity."

After Operation Blue Star, Government media propagated that the damage to the Central Sikh shrine (The Harmandir) had been minimal as the army had taken every care not to fire at it. Doordarshan showed distant shots of the Harmandir as the close-ups would have exposed the lie that the central shrine was undamaged. But when the 'Telegraph' of Calcutta and the 'Hindu' of Madras published pictures of the Akal Takht showing the entire facade wrecked, the Sikhs were shocked to see the building in ruins. Some Sikhs wanted to preserve it in its ruined state as a monument to remind the future generations of Sikhs of what a Hindu-dominated government had done to a very holy shrine of theirs. This, obviously, did not suit the Government, whose Sikh Minister, Buta Singh, went frantically scurrying the deras of eminent saints to persuade any one of them to undertake 'Kar Sewa' in accordance with the Sikh traditions. But since the army was to continue to be present in the Golden Temple during the 'Kar Sewa' no Sikh saint was willing to undertake this otherwise privileged job. The Akalis were also approached to undertake 'Kar Sewa' on the condition that no arms would be allowed to be carried in the complex by the participants. The Akalis accepted it, subject to the condition that the army should be first completely withdrawn from the temple complex. This condition was not acceptable to the Government. However, ultimately, the Government was able to get round Santa Singh Nihang of the Budha Dal to undertake the task. But the Sikhs were not pleased as Nihangs were not considered to be fit persons for carrying out this holy function which had a long history of certain traditions. Nihangs were the suicide squads of Maharaja Ranjit Singh's army who were disbanded by the British after annexation of Punjab in 1849 due to their indiscipline. They are 'bhang' (hasheesh) addicts. There were criminal cases pending against Santa Singh at that time which were promptly withdrawn by the Government.⁷¹ Giani Zail Singh, during his tenure as Congress (I) Chief Minister of Punjab, had projected Santa Singh as a rival to the Akalis. Santa Singh was presented an imported car by Giani Zail Singh, and Santa Singh reciprocated by describing the Giani as a 'Mahaan Pursh', i.e. 'a great man'. The Sikh masses, therefore, looked at Kar Sewa by Santa Singh as a governmental interference in Sikh religious affairs. The Sikh priests declared that what Santa Singh was going to do was "Sarkar Seva", i.e., service of government and not Kar Sewa i.e., "voluntary service". The S.G.P.C. acting President, Rajinder Singh Dhaliwal, announced that all structures which would be built by Nihang Chief Santa Singh, within the Golden Temple complex, would be demolished.

On the 17th July, 1984, 'Kar Sewa' was started by Santa Singh along with his followers and truck-loads of Congress workers, ignoring Sikh traditions. Doordarshan showed them removing some rubble. The rest of the work was done by the hired labourers under governmental supervision. Sikh high priests advised Santa Singh to undertake the task of cleaning the 'Sarovar' (tank) first, but Santa Singh refused to heed to this advice.

According to Sikh traditions, 'Kar Seva' is conducted every 50 years. The first Kar Sewa at the site of the Golden Temple was undertaken in 1580 when Guru Arjan Dev, the fifth Guru of the Sikhs, cleaned the 'Sarovar' around the Harmandar Sahib. The five beloved Sikhs led the congregation in prayer and applied the first spade to remove mud from the tank. Thousands of people participated in that 'Kar Sewa' which went on for over six months. When the mud removed from the pool grew into a mound, the disciples thoughtfully carved in the mound a small room (Kotha) for the Guru to rest in the afternoons. An ordinary cot ('Manji') was placed in this mud-room and a white sheet was spread on it with a pillow. It was called the 'Sukh Asan' ('place of rest and comfort') of the Guru. When Guru Arjan Dev completed compilation of Adi Granth, it was installed in Harmandar Sahib. The Guru ordered that after the daily rituals in Harmandar Sahib, the holy scripture would be laid for rest in the Kotha Sahib. Thereafter, the cot became 'Sukh Asan' for the scripture and Guru Ji never slept over it as the cot was now a sacred place. It was over this mud-room that Guru Hargobind built the Akal Takht in 1608. Thus Akal Takht was built on the mound resulting from Kar Sewa.

When the Golden Temple was first desecrated in 1740 A.D. by Massa Ranghar, the local zamindar of Mandiali used the central shrine as a dancing hall. Bhai Mehtab Singh Mirankot and Bhai Sukha Singh of Mari Kambo infiltrated into the army of the Ranghar in disguise and killed Massa to avenge this sacrilege.⁷² Kar Sewa to rebuild the destroyed temple was first done in 1761. The raiders who had vandalised the Golden Temple were vanquished by the Sikhs and were made to clear debris from the Tank before the high priests began the Kar Sewa. But two centuries later, *i.e.* in 1984, history repeated itself with the destruction of Akal Takht and pollution of the Tank with human blood. But this time an attempt was made by the Government of India to reverse the roles inasmuch as the Indian Army which had caused damage to the shrine was getting Kar Sewa done from the Nihang Sikhs.

The last Kar Sewa before Operation Blue Star was conducted in 1973 when Giani Zail Singh (who later became and was the President of India at the time of Operation Blue Star) was the Chief Minister of Punjab. Giani Zail Singh was then amongst the first to join it. What an irony that the same Zail Singh, being Head of the State, was at least legally and symbolically party to the sacrilege done to the Golden Temple complex.

According to Sikh traditions, Kar Sewa is done only by volunteers and no hired labour is employed. Moreover, these volunteers wash each and every brick and recite hymns from the Sikh scripture while doing so. Guru Hargobind Sahib, the sixth Guru of the Sikhs, who got Akal Takht built in 1608, rejected the offer of Emperor Jahangir for help in building the structure, pleading that it would be built by the Sikhs themselves through voluntary service. But Kar Sewa by Santa Singh Nihang after Operation Blue Star was financed by Government agencies which was against the spirit of the service. Nigam Transporters, a semi-government concern, collected hired labour from the villages and brought them to the Golden Temple. Military Engineering Services (M.E.S.) was allocated by the Government rupees 27 crores for buying and transporting construction material. The Public Works Department was also actively involved. The National Building Company was assigned the task of looking after the architectural and engineering aspects. It was the Government, therefore, and not Santa Singh, who was performing Kar Sewa.⁷³

Thus the Kar Sewa by Santa Singh and his bands served as another punch on the nose of the bruised Sikh community, which was a helpless spectator to the violation of their religious tenets as the Kar Sewa by Santa Singh was being carried on in the presence of the military. The five head priests of the Sikhs, therefore, summoned Santa Singh to explain his recalcitrant behaviour of violating Sikh traditions; but Santa Singh not only refused to appear but also ridiculed the high priests and the S.G.P.C., whereupon he was excommunicated from the Sikh community and declared a Tankhayya (guilty of apostasy) and all his associates performing Kar Sewa were declared as enemies of the Panth. The high priests issued a 'Hukamnama' to this effect.

The Government of India, through its minister Buta Singh, sought to invalidate the Hukamnama ostracising Santa Singh by calling a meeting of the 'Sarbat Khalsa' (convention of the entire community) on the 11th August, 1984. The Government machinery was used to bring people from Delhi and Haryana to the site of the

meeting at Amritsar, still the assemblage was far from impressive. The meeting passed a resolution appreciating the role of Santa Singh and Buta Singh in organising the Kar Sewa.

To counter the Government-sponsored 'Sarbat Khalsa' the S.G.P.C. announced a World Sikh Meet for the 2nd September, 1984 to be held at Amritsar. As a bigger and more impressive gathering was expected at this meeting, the Government decided to remind the organisers that Section 144 was in force. Indian embassies and consulates were instructed not to issue visas to Sikhs intending to attend the meeting. The police put up road blockades on all routes leading to Amritsar. However, despite the obstructions created by the Government, there was a much larger audience than at the 'Sarbat Khalsa' sponsored and organised by the Government earlier. The convention served an ultimatum to the Government to withdraw the army from the Golden Temple by the 30th September, 1984, or face the consequences. Some persons raised pro-Khalistan slogans and unfurled the Khalistan flag at the convention site, but the police arrested them and registered a case for indulging in seditious activities.⁷⁴ The Cabinet Sub-Committee of the Government of India met to consider the proceeding of the Convention and decided that the army would continue to assist the Civil Administration in Punjab as long as the State Government felt that it was necessary for maintaining peace. It also decided that operations against the Sikh extremists would continue.⁷⁵

Thus the gulf between the Government of India and the Sikh community widened and a large number of Sikh youths were alienated from the national mainstream as they felt that the Government was trying to finish Sikhism and Sikh identity.

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Chapter 2

The Revenge

For months after the Operation Blue Star it was an undeclared Army rule in Punjab as the civil authorities practically ceased to function.¹ Even after the Army had been withdrawn from the Golden Temple complex, the holy city of Amritsar gave the look of an occupied territory. Army convoys still rumbled along and the army men used the bomb-blasted multi-storeyed buildings close to the Golden Temple as watch-towers to keep a constant vigil on all those who entered or left the Temple complex. In the evening every passing vehicle was searched, passengers hauled out, luggage examined and the Sikhs in particular were insulted. If anybody objected, he was falsely implicated under the Arms Act. Armed police moved everywhere in groups and kept permanently sitting at the entrance to the Golden Temple complex, around Guru Nanak University, Amritsar, and Khalsa College, Amritsar, and in front of shops in the lanes and bylanes of the city. Army staged flag marches everyday.

A reign of terror was let loose in villages. Any Sikh youth who wore a yellow or blue turban or had a kirpan was captured, humiliated and sometimes even shot.²

The army behaved like an invading force. The ladies were made to dance all night under threat, men were blind folded, vilely abused and taken to the military camp and after interrogations lasting several days they were handed over to the police.³ People thought death was better than life when hundreds of Army men raided houses in the night, pounced upon sleeping ladies and small children.⁴ Men were tortured at the interrogation centres which were in fact torture chambers. If someone, unable to bear the torture, died, no post-mortem was done as there was no record of their arrest.⁵ Even dead bodies were not handed over to the relatives, and, if at all returned, the relative taking over the body had to certify under the threat of being shot down that the man had committed suicide. Thus several able-bodied, innocent men suddenly disappeared leaving no trace behind.⁶ In order to save themselves

from harassment some men ran away to Pakistan and they were declared terrorists and extremists.⁷ Religious-minded Amritdhari Sikhs were special targets of the Army. The Army Gazette published in its 'Baat Cheet', Special No. 153, an appeal which read :

"Any knowledge of the Amritdharis who are dangerous people and pledged to commit murders, arson and acts of terrorism should immediately be brought to the notice of the authorities. These people might appear harmless from outside but they are basically committed to terrorism. In the interest of all of us their identity and whereabouts must always be disclosed."

As a result, Amritdhari Sikhs began to be hounded. One wondered if India was really a secular State where freedom of worship was allowed to every citizen.⁸

False encounters became common and the police got rewarded for committing these cold-blooded murders and police officers got promotions for savage repression.⁹

Even children were not spared. On the 1st August, 1984, when eleven members representing ten political parties of India visited Amritsar, they were informed that 25 children between 4 and 12 had been detained in Ludhiana jail under section 107/262, having been rounded up from the Golden Temple in early July. A well known social worker of India, Smt. Kamala Devi Chattopadhyaya, moved the Supreme Court through a writ petition which took "serious note of the state of affairs obtaining in Punjab". The Supreme Court ordered the authorities to release "all children kept under detention in various jails and children's homes in the state of Punjab immediately." The orders, however, were not carried out and several minor children continued to rot in jails.¹⁰

Even the religious singers of the Sikhs known as 'Ragis' were arrested. Surinder Singh Ragi (Patna Sahib Wala) who was then acting as head Ragi of the Golden Temple was placed under house arrest from June 10 to June 18 and thereafter was forced to sing for Radio transmission so that the world could be told that everything was normal inside the Golden Temple. He sang Guru Nanak's verses from Guru Granth Sahib through which the Guru had described the pitiable plight of the common man under the ruler who had the habits of a dog, a snake and a donkey.¹¹ Later, he was warned by the Government on the 4th August, 1984 not to sing this song of Guru Nanak. He did not stop singing this song although he did not sing the whole of it thereafter. A case of sedition under Section 124-A was registered against him.

Although United Nations Declaration on the protection of all persons from torture and other cruel, inhuman or degrading treatment or punishment (1975) prohibits torture even in a state of war or threat of war or internal political instability or any other public emergency, those arrested under Operation Wood Rose were tortured inhumanly. According to Shri T.S. Cheema, District and Sessions Judge, Patiala, who investigated complaints of torture on orders from Mr. Justice S.S. Sodhi of Punjab and Haryana High Court, reported that the police employed two common modes of torture. One is the use of an extra-thick pestle, like a mini log, which is placed on the thighs of the detenus with one person or two persons standing on it. The detenu is made to lie on the floor prostrate or supine. The pestle with load thereon is then rotated on the thighs. If the position is prostrate then the lower leg is bent over the pestle and pressed against it. Surface of the pestle being smooth and wrapped in a cloth does not cause any outward injury on the thigh. The second mode of torture, according to Sh. T.S. Cheema, consisted of stretching the legs open to an unbearable extent. The detenu is made to sit on a plain surface with one person supporting his back with his knees and pulling his long hair backwards. The legs are held at the ankle level by different persons and pulled apart. The legs on reaching a particular angle cause acute pain which on persistence results into swooning. All this also violated Article 5 of the United Nations Universal Declaration of Human Rights (1948) which provides that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Other provisions of the United Nations Universal Declaration of Human Rights (1948) were also flouted. Article 9 of this Declaration provides that no one shall be subjected to arbitrary arrest, detention or exile, while Article 11 provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. Clause 2 of this Article provides that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. On the 14th July, 1984, the Special Courts Act was passed through a Presidential Ordinance which set up Special Courts *vide* which scheduled offences were made triable by Special Courts. While under Section 167 of the Criminal Procedure Code, a Magistrate is empowered to give police remand only for 15 days, under the Special Courts Act this period was extended to 30 days.

Similarly, while under the Criminal Procedure Code, on the expiry of 90 days the accused is bound to be released on bail if the challan is not presented in court during that period, the Special Courts Act extended this period to one year.

Amnesty International expressed concern that political detainees faced trials by Special Courts. The Minister of State for Home Affairs stated that on the 22nd March, 1985, as many as 1785 cases had been conducted before Special Courts in Punjab and a further 3264 cases were pending.

Amnesty International also received reports about people arrested in connection with political activities being tortured and ill-treated in the police stations of Punjab. It also expressed concern that the existing legal safeguards for detainees in Punjab were not always observed. In March, 1985, Amnesty International wrote to the Governor of Punjab about reports that in at least five cases the Government had failed to release people detained without trial under the N.S.A. although their release had been recommended by the Advisory Board established under the Act.¹² Amnesty International also received other complaints, some in the form of signed affidavits to the Supreme Court, alleging misuse by the police of their wide powers of arrest and detention under the special legislation in force in Punjab.¹³ If a person wanted by the police could not be found, relatives were allegedly arrested, and sometimes beaten up and detained. The police were also accused of implicating people in offences punishable under the Arms Act by planting weapons on them after arrest.

Even the judiciary became attenuated and emasculated. On the 21st June, 1984, the Writ of Habeas Corpus on behalf of Sant Harchand Singh Longowal came up for hearing before the vacation Judge, Mr. Justice E.S. Venkatramiah, of the Punjab and Haryana High Court who was asked to determine whether a detenu should be set free on the ground that his confinement was in violation of law. He observed, "I feel that the question involved is too large and complex for the shoulders of a single judge to bear." This order was criticised by legal luminaries. Mr. Upendra Baxi, in the cover story published in the Magazine Section of the Indian Express of the 5th August, 1984, under the title "Let the Body be produced" wrote :

"No judge who has sworn the oath to protect and preserve the Constitution is permitted to say that his exalted shoulders cannot bear the burden of deciding the issue of the liberties of a citizen. The doctrine of humble shoulders is not a part of Indian or, for that matter, world jurisprudence... By its order

of June 21, 1984, the court has signalled to the nation that amidst the clash of arms, the law shall be silent. Judges must understand also that when the law is silent, only the clash of arms will decide the national issues.”¹⁴

The prediction of Mr. Upendra Baxi proved true. The Sikh youths who were hounded under the Operation Wood Rose, harassed and tortured by the security forces but were not protected by the arms of law, took up arms to take revenge and their primary target was obviously Smt. Indira Gandhi, who was responsible for all their miseries and desecration of their holiest of holy shrines. On the 10th June, 1984, only 15,000 Sikhs had marched in Vancouver wearing black arm bands and chanting “Death to Indira”¹⁵, but the operation Wood Rose made it a wishful dream of many a Sikh youth. In the last week of May, 1984, the headquarter of RAW had received a message from the Indian Embassy in Baghdad (Iraq) that Paramjit Singh, a terrorist, was reaching Delhi on the 23rd May, by Iraqi Airways night flight and he had been hired by some foreign organisation to assassinate Smt. Indira Gandhi.¹⁶

Earlier, in April, 1984, some extremists had attempted to intrude into Indira Gandhi’s residence at night time. A few days before this incident they had murdered Duli Chand, A.S.I., who was on security duty with Smt. Indira Gandhi and they had procured information about the security arrangements at the residence of the Prime Minister.¹⁷ After Operation Blue Star it was reported that two death squads of the Sikhs from Canada had left for Delhi. On the 20th July, 1984, the police arrested at Palam Airport, Delhi, a retired Brigadier of the Indian Army, named Jagir Singh, who was found in possession of 3 revolvers and who confessed his involvement in the conspiracy to kill Smt. Indira Gandhi.¹⁸ But, after Operation Blue Star, a large number of young Sikhs took a vow to take revenge for the atrocities committed on devotees (including women and children) in the Golden Temple. So, on the 29th October, 1984, Smt. Indira Gandhi’s grand children Rahul and Priyanka were injured in a car accident said to have been caused by a hit squad.

On the 31st October, 1984, Smt. Indira Gandhi was shot dead at her residence in New Delhi by two of her Sikh security guards. In the four days of rioting that followed her death, nearly 1000 Sikhs were killed and about 2000 were injured in Delhi, Kanpur and other cities of India. Punjab, however, remained peaceful largely as a result of preventive measures taken in the state.¹⁹

The two assassins were Beant Singh and Satwant Singh who were on duty at 1, Safdarjung Road. Earlier, Beant Singh was removed

from duty on the advice of the late Prime Minister's Security advisers soon after Operation Blue Star, but he was reinducted because the Prime Minister had insisted on it. It was stated by some persons who were later accused of lapse in this regard that Smt. Indira Gandhi had become furious when she did not see the familiar face of Beant Singh in the inner security ring.²⁰

According to F.I.R. No. 241, lodged at Tughlaq Road police station, Smt. Indira Gandhi came out of her residence at ten minutes past nine in the morning for going to her office situated at 1, Akbar Road. While she was walking on the road connecting her office and residence, A.S.I. Beant Singh, who was on duty at T.M.C. gate, fired 5 shots from his revolver at Smt. Gandhi. When the first bullet hit her, she turned back and fell down. Just then Satwant Singh came out of the bushes, and, from a distance of about 3 feet from Beant Singh, fired all the 24 shots of his stengun on Smt. Gandhi.

At the time of the incident, Narain Singh, Head Constable, was following her with an umbrella just behind her, a little towards her right side. Towards her left was his Special Assistant, Mr. R. K. Dhawan. Her Personal Assistant, Nathu Ram, was walking behind Mr. Dhawan. Behind him was walking, towards the right, A.S.I. Rameshwar Dyal. At the end was walking H.Y. Sharda Parshad. Rameshwar Dyal was also hit by bullets. Dhawan, Nathu Ram and Narain Singh cried for help. The doctor, who was on duty at her residence, took her to the All-India Institute of Medical Sciences.²¹

The Government constituted a Commission and appointed Mr. Justice M.P. Thakkar, a serving judge of the Supreme Court, to look into the security lapses, medical lapses, conspiracy and other aspects pertaining to Smt. Indira Gandhi's assassination. He reportedly indicted 23 senior officials of the Government, including Mr. R.N. Kao, a former Chief of the Research and Analysis Wing (RAW) and others for failure to take adequate steps for the protection of Smt. Gandhi after Operation Blue Star, and for ignoring renewed threats to her life. The Commission reportedly found "a foreign hand" in the conspiracy to assassinate the Prime Minister.²² After the report of the Commission was received, the Government entrusted the task of looking into specific security lapses and fixing responsibility to Mr. A.K. Basak, a senior Joint Secretary in the Union Home Ministry. The Basak Committee reported that there had been no specific lapse on the part of I.P.S. officials.²³

There were conflicting reports about the total number of bullets shot at her. Her abdomen had been completely smashed. Her chest region, too, had received multiple injuries. The Brain Caloric Test

indicated that the brain was dead. Oscillograph showed cardiac arrest. It is generally believed that if the blood supply to the brain is disrupted for three minutes, the brain cells die and cannot be revived, even if the heart revives. Therefore, according to some people, she was brought dead to the AIIMS at 9.30 a.m. although her death was officially announced at 3.40 p.m.²⁴

Beant Singh had been recruited to the VIP security force in 1982 on the recommendation of Buta Singh, Home Minister.²⁵ Satwant was alleged to have written letters to Beant, coaxing and cajoling him to kill the P.M.²⁶

Within ten hours of Mrs. Gandhi's death the entire Capital had been sucked into a maelstrom of loot, arson, murder and mayhem. It began at 6 p.m. on the 31st October, 1984.

The pattern of killings, arson and looting was uniform in Congress (I) ruled states. This was evidence enough to prove that the entire carnage and pillage was master-minded by the ruling party leaders.

Lumpen youth, with their iron rods and cans of kerosene, searched for their victims in the bazars and streets. They had with them lists of Sikh houses, shops and factories. Slogans like "blood for blood" and "kill the traitors" were shouted vociferously. The police not only remained a mute spectator but also instigated the crowds to finish the job within 72 hours. At places policemen shouted "If Sikhs had been given four hours, they would have finished all of you. Why are you being so tardy?"

The sequence of events showed a well thought-out plan. The first phase was marked by the floating of false rumours on the evening of October 31. One story bandied was that 500 dead bodies of Hindus had been brought to New Delhi by Shan-e-Punjab train. Nobody bothered to find out that this train did not run on that particular day of the week. Then it was given out that Delhi's water supply had been poisoned by Sikhs. This was again a white lie. Another yarn was that the Sikhs had distributed sweets to celebrate Mrs. Gandhi's murder.²⁷

The second phase began with the arrival of groups of armed youngmen in trucks, buses and tempo vans in different localities of Delhi on November 1. The first targets were taxi-stands, buses, trucks, scooter-rickshaws, two-wheelers and cars owned by the Sikhs. Then came the turn of Sikh houses and factories. After looting, Sikh men, women and children were pulled out, beaten with iron rods, sticks and hammers till they were half dead. Then kerosene was poured on them and they were set ablaze. Bonfires of human beings could be seen in every lane and on every road at every ten yards.²⁸

As for the police, they were either absent from the scenes of violence, or passive spectators, or even direct participants in the orgy of violence against the Sikhs. In the resettlement colonies the police came out of their passive role and directly participated in the violence.²⁹

Mr. R.K. Ahuja, Home Secretary of the Delhi Administration in report submitted to the Central Government, confirmed that 2733 Sikhs men, women and children were killed in the Indian Capital during November, 1984 riots which followed Mrs. Indira Gandhi's assassination. This official figure is, however, 1067 less than that provided by the Citizens' Justice Committee. The Mishra Commission, in its report presented to the Parliament on the 23rd February, 1987, had stated that the number of deaths could be between 2307 and 3874. The Citizens Committee, headed by a former Chief Justice of India, Mr. S.M. Sikri, had submitted a list of 3800 names to the Mishra Commission. Since different submissions had been made to the Commission, it had recommended that the matter be further examined by an officer. Hence Mr. Ahuja's report.³⁰

While the Government admitted 65 deaths in anti-Sikh riots at Kanpur, PUCL Report gave the names and addresses of more than double this number. According to a report in the local daily, the 'Jagran', the police submerged a truck-load of dead bodies at night in the Ganga river.³¹

During riots in Delhi, for two days, the streets were over-run with screaming persons, but there was no police action, no lathi-charge, no teargassing, no firing. All over the city the police simply stood by and watched the mobs running amuck.³² On the other hand, Sikh police officers were maligned through false rumours. Sardar P.S. Bhinder, former Delhi Police Commissioner, said in a Press statement, "when passions were running high and innocent Sikhs were being subjected to savage butchery, senior police officers were busy spreading rumours about my involvement in a conspiracy to kill Smt. Indira Gandhi."³³ He further said, "Delhi police officers have brought enough ignominy to the police forces in India and instead of hanging their heads in shame they are busy spreading wild rumours."³⁴

In Delhi, nearly 150 Gurdwaras and 100 schools of Sikhs were burnt down or badly damaged. According to a rough estimate, property worth Rs. 150 crores was destroyed. Throughout India, more than 100 cities were put under curfew, while there were many more without curfew where Sikhs had been killed and their properties had been looted. The number of killed was over 10,000 and those wounded nearly one lakh.³⁵

Riots in Delhi started at the All-India Institute of Medical Sciences. One of the first victims outside the Institute was a scooterist, who, after being stopped, was surrounded by a Hindu mob which removed his turban and beat him till his blood began to flow. His scooter was set on fire and in the darkness of the night the fire was visible even long after the mobs had gone.³⁶

The next victim outside the Institute was a Sikh cyclist, who, unaware of the mob frenzy, was on his way home when he was stopped, asked to alight from his cycle, beaten up and told to go away. Then on an electric pole, the cycle was hung upside down and a match set to it.

Half a kilometer away from the All India Institute, a 4000 strong mob of hoodlums went berserk and stopped a DTC bus, pulled out two Sikh passengers and beat them with iron rods and sticks. They were left bleeding from top to toe, their cries of "hai, hai" were drowned by the mad slogan-shouting around the bus : "Death to all the Sikhs". One of the hooligans said, "We have bashed them (the Sikhs) to our hearts' content."³⁷

By 8 p.m. on the 31st October, 1984, mobs had penetrated to the elitist South Delhi colonies of Vasant Vihar, Hauz Khas, Panchsheel Enclave, Green Park, Defence Colony, South Extension and Safdarjung Enclave. As though by mutual assent, the mob divided the colonies amongst themselves and crowd of two or three hundred each swooped on the colonies simultaneously. Their targets were houses belonging to the Sikhs, and their aim to plunder homes and property. In minutes the houses wore a shattered look. The mobs carted away even the televisions and refrigerators.³⁸ From South Delhi, the violence spread to every nook and corner of the Capital and there seemed no stopping the terror let loose on the city.

On November 1, passions had been further inflamed. The mobs, realising that the police force was in no mood to take action, let themselves go with an unholy joy. At 12 p.m., on the 1st November, a 4000-strong crowd collected outside the Bangla Sahib Gurdwara, but when the Sikhs, camping within the Gurdwara, armed with swords, spears and lathis offered stiff resistance, the mob had no option but to retreat. The same mob then marched towards the Rakab Ganj Gurdwara, near the Central Secretariat. First, a few vehicles parked behind the Gurdwara were burnt, and then the mob began pelting the Gurdwara and its occupants with stones. There was also some exchange of fire from both sides. While brickbattling continued, two Sikhs tried to escape from the premises. The mob pounced upon them and beat them mercilessly, and when they were

almost half-dead, one of the lumpens emptied a can of kerosene on both and set them on fire. While one of them died on the spot, the other tried to crawl back into the Gurdwara, but died before he could do so. On the same day, two young Sikhs were dragged out of the Chetak Express running from Udaipur to Delhi, near the Delhi Cantonment station, and were burnt alive near the railway tracks. A Sikh father and his two sons died a similar death in Maya Puri (West Delhi). On Palam Road, two Sikh brothers were burnt alive outside their house. While their bodies were still aflame, the neighbours collected some wood and cowdung to cremate the two on the spot. In block D of Janak Puri, a primary school teacher was confronted by the same mob and was beaten and then burnt to death.³⁹ In Malkaganj, 11 Sikhs were burnt alive.⁴⁰ The entire complex of the mortuary in Sabzi Mandi was stacked with burnt and mutilated bodies and dead bodies were littered all over, including the verandah, garage and the open space around the building.⁴¹

And the three days of violence climaxed in the Trilokpuri massacre. The estimated toll in this resettlement colony was well over 400 and for hours the colony was nothing less than a death trap. Block 32, which was densely populated by the Sikhs, was surrounded by the mobs. The screams of pain, the cries for help, the begging for mercy echoed and re-echoed, but there was no one to hear, no one to help.⁴² It presented a sight guaranteed to turn the stomach of the toughest war veteran. While mobs encircled a part of the colony, subjecting its inhabitants to a grisly carnage, the S.H.O. of the local police outfit played possum. Although the massacre began somewhere between 12 noon and 2 p.m. in broad daylight, this ornament of law and order did not even alert his superiors in the police force. Charred bodies, dismembered limbs, mangled remains of what were once living human beings, the stealthy, creeping street dogs, and the foul stench of burning flesh bore silent testimony to the vile bestiality that had vented its wickedness here.⁴³

As a result of these anti-Sikh riots in Delhi, about 6000 families comprising 28000 members migrated to Punjab in the month of November, 1984. Moreover, about 60 to 70 thousand Sikhs took shelter in relief camps at Delhi during these riots.

Many Sikhs from other parts of India also left their hearths and homes in search of safety and migrated to Punjab. It is estimated that a total of about 50,000 Sikhs migrated to Punjab following these anti-Sikh riots in India. The relief centres set up by the S.G.P.C. provided assistance to over 1800 families in Amritsar and over 5460 families in Ludhiana.

This carnage left behind an estimated 900 widows and over a thousand fatherless children in Delhi alone.⁴⁴ The 21 widows in one family, who spent the blackest October 31 in their lives and are subsisting on doles from the Gurdwara, are still depressed. Understandably, these widows are unable to come to terms with the reality, having seen 24 of their men (all descended from three brothers) hacked and burnt within a few hours. They spent the night out in the cold with their 20 children even as the city burnt all around them. They walked barefoot to a lone surviving cousin's house in Harinagar from Sagarpur near Palam to escape further misery.⁴⁵

Gurjeet Singh was an old man. He had been living in Trilokpuri for quite some time now. On the 2nd November, they came around 9 a.m., snarling and jeering, dragged the 70-year old man out of his house, hung a truck tyre round his neck and pouring petrol into the hollow of the tyre they set fire to it. Chanting blasphemous slogans about the Sikh religion, they made Gurjeet jump up and down. With the halo of fire around his neck Gurjeet was burnt to death. His smouldering body lay in the open for one whole day, before it was removed to the city morgue.⁴⁶

Overall reports stated that 117 persons had died in U.P. at Ghaziabad, Lucknow and Kanpur while 60 had died in Haryana at Faridabad, Gurgaon, Rewari and Sonapat. Two hundred deaths were reported from Bihar at Bokaro, Bhagalpur, Daltanganj, Dhanbad, Hazaribagh, Muzaffarpur, Patna, Ranchi and Jamshedpur. Eighty-seven Sikhs were killed in Madhya Pradesh at Ratlam, Rewa, Sagar, Satna, Sehore, Seoni, Shahdol, Shajapur, Shivpuri, Sidhi, Sarguja, Tikamgarh, Ujjain, Vidisha, West Nimar, Balaghat, Bastar, Betul, Bhind, Bhopal, Bilaspur, Chhatarpur, Chhindwara, Damoh, Dewas, Dhar, Durg, East Nimar, Guna, Gwalior, Hoshangabad, Indore, Jabalpur, Jhabua, Mandla, Mandsaur, Morena, Narsingpur, Raigarh, Raipur, Raisen, Rajgarh, and Rajnand Gaon.⁴⁷

The mobs were exhorted by Congress (I) leaders "to teach the Sikhs a lesson".⁴⁸ Kerosene oil was poured on Sikhs and an inflammable powdery substance was thrown at them to burn them alive.⁴⁹ No action was taken by the Government to punish the culprits. Rather, Mr. Rajiv Gandhi, the son of Indira Gandhi, who had succeeded her as the Prime Minister of India, at a Press conference, justified the action of the rioters, saying, "When a giant tree falls, the earth shakes."⁵⁰ It was only on the 26th April, 1985, six months after the anti-Sikh massacre in Delhi, that Rajiv Government set up the one-member Justice Ranganath Misra Commission of Inquiry to probe the killings. Its report was submitted in February,

1987. He indicted 19 Congress (I) workers, but gave a clean chit to the party which had been charged by the People's Union of Civil Liberties, in its report "Who are Guilty?", of having abetted the carnage.

Justice Misra in his report had observed that "the riots which had a spontaneous origin later attained a channelised method at the hands of gangsters". He also recommended the setting up of two more committees – one committee to investigate the role of the police, and another to inquire whether the cases registered after the riots had been properly investigated.

The Delhi Administration appointed Dilip Kapoor-Kusum Lata Mittal Committee to probe the role of the police. Kapoor did not begin work because the Government did not allot him staff or office. Mittal completed her report, but it was returned by the Delhi Administration which asked for a joint report.*

Jain-Banerjee Committee was appointed to inquire whether the cases registered were properly investigated. But before it could submit its final report, its appointment was challenged by a Congress (I) leader, Mr. B.M. Gupta, in the Delhi High Court, on the ground that no such fact-finding committee could be set up outside the purview of the Commission of Inquiry Act. The Delhi High Court accepted this plea and declared the appointment of this Committee null and void.

In December, 1984, the then Additional Commissioner of Police, Mr. Vcd Marwah, was asked to hold an independent enquiry into the conduct of the police. But before he could complete his investigation, a Deputy Commissioner of Police, Chander Prakash, obtained a stay from the Delhi High Court on the same ground on which the Jain-Banerjee Committee had been negated. Thus, due to sabotage by the Congress (I), the men guilty of the anti-Sikh massacres could not be prosecuted and punished according to the law.

Punishment of the people guilty of 1984 riots continued to be deferred in spite of demand repeatedly made to this effect by the various Human Organisations, including Amnesty International and the Sikh people.

* This Committee was revived on the 23rd January, 1990.

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APPENDICES

Appendix-1

Biography of Sant Bhindranwale & Maj. Gen. Shahbeg Singh

Two Martyrs of 1984 Amritsar Massacre

1

Sant Jarnail Singh Bhindranwale – A Star who Shone Brilliantly for a short but Eventful Period

The Bhindranwale phenomenon in Sikh politics was of recent origin but in a short span of time came to dominate it completely pushing into the background the Akali Dal, a party of standing which had been through the fire of many an agitation. There was an irony about his ascendancy in the political field because he, a preacher, liked to describe and project himself as a defender of the faith, with an air of unconcern about the world of politics. But because of the ease with which religion and politics are mixed in the Akali camp, Jarnail Singh Bhindranwale found himself driven into the turmoils of politics without any difficulty and soon came to occupy the centre of the stage.

His career as a preacher started as the Head of *Taksal* or Mint, the name given to an institution which was concerned with religious teachings and interpreted Sikh scriptures in what was described as the only correct or pure form, just as a mint turned out pure coins as against the base ones, produced clandestinely. With a strong trait of fundamentalism, he saw the Nirankari sect as the gravest threat to the Panth and did not mince words about his resolve to crush them. In the initial stages, religious teachings was his whole-time job and, though married with two children, he, in keeping with the norms that went with his job as a preacher virtually renounced family life.

In the Open

Moga called Bhinder, from which he derived the appellation "Bhindranwale". The Mint was later shifted to Chowk Mehta, 40 km. from Amritsar. In the beginning, Bhindranwale was not on the best of terms with the Akali Dal, whether it was in the Government or outside it. On April 13, 1978, the holy day of Baisakhi when his 13 followers were shot dead by the Nirankaries in Amritsar, Bhindranwale took senior Akali Minister, Jathedar Jiwan Singh Umranangal (Akalis were then in power in Punjab) to task publicly. At a massive religious congregation in the Golden Temple complex that day Bhindranwale snatched the mike from Jathedar Umranangal and demanded action to disperse the Nirankari convention that was being held elsewhere in the city.

Failing to get an assurance, he led a march to the "Nirankari camp" and in the confrontation that followed, his disciples suffered heavily. The memory of that day and the "inaction" of the Akali Government continued to rankle in his mind long after.

He nominated his right-hand man and the son of his predecessor at the *Taksal*, Bhai Amrik Singh, to become the President of the All India Sikh Students Federation, now banned.

The Akali Dal and Bhindranwale, however, got together in the same camp in the middle of 1982, when the party shifted the venue of its agitation against the Sutlej-Beas link canal from the Kapuri village near Patiala to Amritsar, and he moved into the Golden Temple complex (in July that year) following the arrest of Bhai Amrik Singh and one or two others. The Akali leaders agreed to include the release of Bhindranwale's associates in their demands and he, in turn, lent his support to the Akali agitation.

Devoted as he was to Panthic glory and ascendancy (*Charhdi Kala*), he plunged himself into the mission of restoring his community's self-respect.

Some may differ with his methods and utterances but no one could doubt his sincerity, open-heartedness, frankness, and the determination to make all sacrifice for Sikh causes.

It was in keeping with these concepts of his that he and his men valiantly defended the Golden Temple complex when Indian Army stormed it on the night of June 5.

As the Army invaders approached the Akal Takht portals, Sant Bhindranwale came out like an enraged lion along with his companions. They leapt on the Indian soldiers with fury and tenacity. But were mowed down with bullets in a few minutes.

Army officers then dragged his body to the basement of the Akal Takht. It is lie that he was killed by Babbar Khalsa men.

Sant Bhindranwale and his men have upheld the tradition of Baba Deep Singh and his comrades who had sacrificed their lives while fighting against Ahmed Shah Abdali's forces in the Golden Temple area.

2

Major General Shahbeg Singh ————— The Hero who Master-minded Defence of Golden Temple complex against Invading Indian Army

He was ubiquitous, but few could claim to have seen this man whose authority was recognised by all – from the chief secretary of Agartala to those further down. Brigadier Shahbeg Singh had cut his hair short and, with his beard still intact looked like a Pathan. No one really suspected him of being the man in-charge of the Delta Sector, when he walked across to what was then East Pakistan and met Mukti Bahini volunteers he had organised during the Indo-Pak War of 1970-71.

At the end of the conflagration, Brig. Shahbeg Singh was a hero and was awarded the Ati Vishisht Seva Medal. A person, who saw the action from very close quarters in the eastern theatre, recalled the admiration he had felt for the Brigadier's organising capacity, and devotion to duty. The same man saw that Shahbeg Singh's bullet ridden body was found in the Akal Takht at Amritsar's Golden Temple complex. It was a pity that a man, who had distinguished himself as a nationalist, killed under such circumstances.

In 1973, Lt. Gen. Jagjit Singh Aurora, the GOC of the Eastern Command during the war said of the role of the Mukti Bahini: "Our move to Dacca was greatly helped by the local population and the Mukti Bahini who operated river craft, bullock carts, cycle rickshaws and who provided valuable information to enable us to continue our advance on to Dacca."

Shahbeg Singh was the unquestioned master of the Mukti Bahini, or a militia of local volunteers, organised into pockets of amazing resistance. All Mukti Bahini soldiers came to meet him and constantly sought his advice, Maj Sahfi, Capt Pasha, Capt. Gaffar and Major Salek, to name a few important visitors to secret meetings on the border, were almost all deserters of the Pakistani Army.

In the aftermath of the war, though Shahbeg maintained a low profile his mastery over guerrilla warfare was acknowledged without exception. No one could have advised the Punjab Sikhs better on

matters of warfare than Shahbeg Singh, said Colonel Usmani of the Mukti Bahani.

Shahbeg Singh retired as Major-General from the Indian Army.

How could such a nationalist lend his expertise for the cause of "so-called extremists" in Punjab? Was it frustration?

The process of his transformation to a Panthic activist is easily understandable. He could not tolerate his community being humiliated by the power-drunk Government at the Centre. That was why he organised training camps for Sikh volunteers and master-minded the defence of the Golden Temple against marauding Indian Army.

During this inglorious assault Shahbeg Singh personally directed the defence of the holiest Sikh shrine in the world. And, in keeping with Sikh traditions, he laid down his life on the top floor of the Akal Takht which had been converted into a battle field by the invading Indian Army.

Armed men then dragged his body into the basement of the Akal Takht.

Shahbeg Singh's life was well-lived, first in the service of country and then in the service of the Panth.

The stiff resistance put up by Sikhs within the Golden Temple complex against Indian Army largely due to the training imparted the defence bulwarks he organised and the spirit of do-or-die he infused among all those who came into contact with him.

Appendix - 2

Excerpts from Bhindranwale's Speeches

Excerpts from the statements of Shri Jarnail Singh Bhindranwale

(i) *Translation of excerpts from tape recorded speeches transcribed from cassettes.*

“It should be clear to all Sikhs whether living in urban and rural areas that we are slaves and want liberation at any cost. To achieve this end, arm yourselves and prepare for a war and wait for orders.”

“Mind well, in case of any trouble, the muzzles of all the Sikhs in the army and the police will be towards that spot.”

“It is very clearly written there¹ that 12 bore gun does not require a licence. There is no need of a licence. If you are detected with a 12 bore gun and asked where is the licence, you can well point out, it is according to Anandpur Sahib resolution.”

“I beg to warn Sikhs to be vigilant against this trick. Keep on having negotiations but also have your preparations complete.....preparations are to be complete.”

“It comes to 35 and not even 100. Divide 66 crores, then each Sikh gets only 35 Hindus, not even 36th. How do you say you are weak?”

¹Reference is to Anandpur Sahib Resolution

"I had earlier directed that each village should raise a team of three youth with one revolver each and a motorcycle. In how many villages has this been done?"

"Every Sikh boy should keep 200 grenades with him....."

"There is the need to raise motorcycle-groups in order to take revenge against perpetrators of crimes against the Sikhs."

"Those of you who want to become extremists should raise their hands. Those of you who believe that they are the Sikhs of the Guru should raise their hands, others should hang their heads like goats."

"As far as I am concerned, we want all the demands of the Anandpur Sahib resolution accepted i.e. 'Sikhs are a separate nation (Qaum)'. That is all I have to say."

(ii) *Statements published in the Press*

"A Sikh without arms is naked, a lamb led to slaughter.....Buy motorcycles, guns and repay the traitors in the same coin."
(*"International Herald Tribune"*, April 24, 1984)

"Whoever performed these great feats¹ deserves to be honoured by the Akal Takht, the highest seat of the Sikhs....if their killers came to me, I would weigh them in gold."
(*'India Today'*, April 30, 1983)

"I ask them² to prepare themselves to join the fight for our independence as a separate nation."
(*Interview to 'Daily Mail'*, April 12, 1984)

¹ Reference is to the killing of Baba Gurbachan Singh and Lala Jagat Narain.

² Reference is to Sikhs now living in Britain.

Appendix - 3

Parliament Resolution on Punjab

Text of a Resolution Adopted by Parliament on April 29, 1982

“Resolved that this House expresses its deep anguish and concern over the situation recently created in the Punjab and strongly condemns certain calculated acts of sacrilege committed by some miscreants and fanatical elements in Amritsar, aimed at creating disharmony, disorder and misunderstanding among the patriotic and peace-loving people of the State. The House reaffirms its commitment to the national policy of secularism, tolerance and amity among all sections of the Indian citizens, and trusts that the people of Punjab will not allow themselves to be swayed by any mischievous and irresponsible actions of a few misguided and anti-national persons. This House reiterates that the law shall take its course to bring the culprits to book speedily and trusts that all communities and every section of public opinion in Punjab will strive to maintain the traditional communal harmony, goodwill and peace, and continue to work together for the greater good of the State and our country.”

Appendix - 4

Interview with Gen. Shahbeg Singh

An Interview with Major General Shahbeg Singh

Telveen Singh, correspondent of *The Telegraph*, Calcutta held the interview, a bare 4 weeks before Shahbeg Singh was killed in the Army crackdown and his body was found riddled with bullets along with that of Sant Bhindrawale, in the basement of Akal Takht on 7th June, '84.

**I am a finer patriot than the Prime Minister' –
Gen. Shahbeg Singh**

Major General Shahbeg Singh, whose body was found in the basement of the Akal Takht on June 6, along with that of Sant Jarnail Singh Bhindranwale and Bhai Amrik Singh, was interviewed by *The Telegraph* four weeks before he died.

He was a sad, sick man eaten up with bitterness against the Indian government and obsessed with the idea that he had been thrown out of the army only because he was a Sikh. A brilliant General who organised the Mukti Bahini in the 1971 war, he was suspected of having taken away loot and eased out of the army.

He seemed surprised, however, that his name was being linked with the Dashmesh Regiment and said that he did not believe in violence.

He made no attempt to hide links with Jarnail Singh Bhindranwale, however. The General was a slight, frail-looking man with a long, flowing grey beard. His bitterness about what had happened to him had obviously overwhelmed every other consideration. The ruling passion of his last years was anger and hate.

Q. Why were you removed from the army?

A. You should ask the army. I'm the only person whom they did not even put on trial. If they could put up other Generals on trial, if they could take them to court and frame charges against them, why couldn't they do the same for me?

Q. Why didn't they give you a trial?

A. Because they had nothing against me and they just wanted to throw me out. Leave alone a fair trial, they didn't give me any kind of trial. They threw me out under a special clause which has never been invoked in the British army and has been invoked in the Indian army only in my case. This is a special power given to the Chief under which my services were administratively terminated one day before they ended. Then they started two others cases against me: one was that I got a truck in somebody else's name and the other was that I built a house costing Rs. 9 lakhs. I told them I had built the house for Rs. 1.75 lakhs. Vigilance valued it at Rs. 1.8 lakhs or something. In court it came down to exactly what I had said.

Q. So you won the cases?

A. I won the cases. This was after my dismissal. But I wasn't dismissed on these grounds. What happened then was that they handed over the case to the CBI three years for the investigation. After dismissing me, they filed this case in the court so for the next five years I was humiliated and harassed in court. I realised they were delaying the cases deliberately, I went and talked to the then Home Minister, Giani Zail Singh, and he assured me justice. I had gone with the then Advocate General who is a friend of mine, and he told Gianiji that this man has done so much for the country. He said, look this is probably your only General who has brought so much fame to the country and look what you are doing to him. Gianiji asked for the case to be reviewed but he never did anything about it. In any case nothing was done. And instead of withdrawing these false cases against me they went on deliberately delaying the legal proceedings. The judge wrote a letter to the CBI saying that the time and effort of the court should not be wasted and witnesses should be produced in court. In spite of this case continued to be delayed and the CBI told me that they could delay it for 20 years if they wished.

Q. But how did you suddenly fall out of favour after being a hero in the Bangladesh War?

A. Because I made a statement, not a statement really, I just said during the Emergency that nobody was indispensable in the service of this country. This to me was a patriotic statement. But this statement was carried through the backdoor to the Chief and the PM and God knows what they thought, that I was a rebel or whatever. The aim was to deny me my promotion because I was a Sikh. This is how Sikhs are being persecuted in the army.

Q. Do you feel that other Sikhs in the army are also discriminated against like this?

A. Of course. It is not just a question of being discriminated against. We are all suspect. It has been stated by no less a person than Air Chief Marshal Arjan Singh on TV that Sikhs as a class should not be suspected.

Q. Can you tell us a little bit about the Mukti Bahini, how you went in and set it up.

A. These are all top secret things about which I am not supposed to talk. I'm not even allowed to write a book. (If I talked) I would be called unpatriotic and I don't want that.

Q. But can't you tell us about the first time you went in and what it was like?

A. You can ask General Jagjit Singh Aurora. He was my boss. I'm not in the habit of talking about these things.

Q. But since you've been victimised.....

A. Of course I've been victimised. I even appealed to Mrs. Indira Gandhi. I said, let me court martialled now, or put me up before a civil court or a tribunal headed by an eminent legal man. As a last resort I even suggested that my case be looked into by someone like Mr. Arun Nehru. I also stated in my appeal that I was unwell and that my wife was suffering because I had continuous active service for 13 years with just a six months' break in between. I was serving in Jammu and Kashmir when I went for the Chinese War. There again in Kaul's book I am mentioned, because at a time when people were retreating and bringing dishonour to the country, I was going forward and bringing honour. Read *Untold Story*, page 419, I think.

Q. What was your rank at the time?

A. I was Lt. Colonel, yet the work I was doing was not that of commander's. I was staff officer. First I was staff officer to General Harbaksh, then I became staff officer to General Kaul and after that came General Manekshaw. I was General Staff Officer in IV corps for all these three Generals. Another person who was told to move forthwith from Jammu and Kashmir to go and face the Chinese took 20 days to get there. He was a Hindu; I took one day. Now, that is my patriotism. But I am a Sikh and he is a Hindu. He became an Army Commander, Lt. General, but I was singled out so that I could not come forward for further promotion. And all kinds of charges were brought against me. I was even told that I was a friend of Mr. Bahuguna after he had been removed from chief ministership. Now what I said then was, I've got nothing to do with politics but if he has been invited earlier when he was the chief minister to participate in a *mushaira*, how can I tell him not to come; even though the police commissioner and the DIG told me that now regular reports were being sent on him to Delhi. This was also considered an anti-national act. the fact that he came to a *mushaira* in Lucknow arranged by me.

Q. But do you really think it was because you were a Sikh?

A. *Aur kya*, what else.

Q. But General Harbaksh made it to quite high up and so did General Aurora.

A. Well, then they probably denied that to me because there would have been too many Sikh Generals.

Q. But were you supporter of the Sikh cause in those days?

A. You see I am a non-drinker, non-smoker and vegetarian and my associations have always been with *sants* and *sadhus*. I was once told that this man associates with mendicants I have always been spiritually inclined. My mother taught me *Japji* when I was only five years old. And then I was in the habit of always organising an *akhand path* wherever I went. When Gyaniji has a picture taken carrying the *Granth Sahib* on his head he is considered a devout Sikh. But when I did it as a General they spoke of me as a religion-oriented man.

Q. But weren't you clean shaven when you went into Bangladesh?

A. Well my beard was short and my hair which has never been very long was cut slightly.

Q. You went in as a Muslim, didn't you?

A. Yes, how else could I have gone? I talked it over with Sam Manekshaw and I said, why are you sending me? He said, I have confidence that you will be able to make it. From doing counter-insurgency work in Nagaland I went on to insurgency work in Bangladesh. These people who are crooked and clever in the Indian Army never accept jobs like that, yet they became senior Generals. I would like to know if....Kaul, who is going to be the next Chief, has ever heard a bullet being fired. When the war is about to be over he arrives but if it is about to start then he is always posted to a very nice, safe place. When the '65 ceasefire came he was immediately posted to Jammu.

Q. How long have you been living here (Golden Temple)?

A. For about three weeks. You see, after winning these two cases we had '*sukhoed*' (vowed) a certain amount of prayers. So every Sunday for three Sundays we have had to go to Gurdwara Baba Deep Singh for six hours of meditation and recitation of the *Sukhmani Sahib*. Then we have done an *akhand path* here at the Darbar Sahib and we still have an *akhand path* and *langar* to do at Baba Bakala. And a certain amount of prayers I still have to do here. I wake up everyday at 3 a.m., have a bath and then at 4.30 I am there for the *Palki Sahib Sewa*. When the *Guru Granth* is carried from the Akal Takht to the gurudwara, I stay on there for my normal *path*. My *Sukhmani Sahib* I do either there or come back here. Then I go back for the *Rehras* (sunset prayers).

Q. So you've been here for some months?

A. No, only three weeks. As my village is here next door, I go and live there. It's just about 10 miles from here, a village known as Khaayala, where I was born. You people are suspecting that I must be here for this and that reason. But it's only because of these *path* (prayers) and my wife's illness, which is a gift from Mrs. Indira Gandhi. I have been living in non-family stations on active service continuously for 12 years. She was diagnosed as having a tumour in the bladder, an infection which has never properly healed. In my appeal to Mrs. Indira Gandhi I said, look we are getting old and if not for me, then for the sake of my wife who has done so much for this country, you should look into my case and give me justice.

Q. Is there a case against you under NSA?

A. I don't know.

Q. Are you a supporter of Sant Jarnail Singh Bhindranwale?

A. As far as my relations with Sant Jarnail Singh are concerned, there is nothing to suspect. I've told you that I am a patriot, probably of a finer mould than the Prime Minister herself. I have met Bhindranwale. There is no doubt about it and I also feel that there is a strong touch of spiritualism in this person. He is a man who stands by the truth. The Government is deliberately terming him a traitor because his brand of politics probably doesn't suit them. But the fact is that there is hardly a Sikh in this world who does not accept him as a leader. I also accept him as a leader. I firmly believe that he is the only Sikh born after Guru Gobind Singh who can get justice for the Sikhs as a community in this country where we have been persecuted ever since independence and suspected individually and as a community.

Q. But do you support violent means?

A. No, we don't believe in violence and I proved it by courting arrest last year and staying in jail for three months. I think that is probably why they decided to punish me and not give me my pension. The orders were received when I was in jail. Having served this country with gallantry and exceptional distinction, this Government thinks it is justice to deny me even my pension.

I became a Bengali for the sake of my country. I cut my beard and then I had to take *amrit* again. I trained General Zia-ur Rahman. He and his wife Khaleda singled me out when they came here. He was directly under me as one of the sub-section commanders responsible for Chittagong. I am the only General to have been treated in such a shabby manner. I cannot afford medicines. I had a massive heart attack last year.

Courtesy: 'The Telegraph', 18th June '84.

Appendix - 5

Indira Gandhi's Broadcast Before 'Blue Star'

Prime Minister's Broadcast to the Nation on June 2, 1984

Fellow citizens,

These past months my heart has been heavy with sorrow, each day's tragedies adding to the anguish. Punjab is uppermost in all our minds. The whole country is deeply concerned. The matter has been discussed and spoken about time and again. Yet an impression has been assiduously created that it is not being dealt with. My colleagues and I have repeatedly explained, in Parliament and outside, Government's readiness to accept all reasonable demands put forward by the Akali Dal when they started their agitation, but new demands continue to be pressed. Unfortunately the leadership of the agitation appears to have been seized by a group of fanatics and terrorists whose instruments for achieving whatever they may have in view are murder, arson and loot. Large scale violence and terrorism grip the State.

Let us look at these problems and issues in perspective. In 1981 the Akali Dal presented a large number of demands. As soon as we received their memorandum I began a dialogue with them. Since then the process of consultation and discussion has not been interrupted by Government. From the very beginning we regarded these issues as national issues, transcending narrow party interests. We took the opposition parties into confidence and associated them with the discussions in an effort to work out a solution that would command the widest acceptance.

Throughout these discussions our attitude was one of accommodation of all reasonable demands. Turmoil and violence in Punjab benefit no one except those who want to undermine the unity

and integrity of India. It was against the background of these larger national considerations that we have been trying to evolve a consensus on the disputed claims and counter-claims.

Why then, some people ask, has there been no final settlement? This question should legitimately be addressed to those who are unwilling to give up morchas and bandhs. Whenever the demands did not affect the rights of other States or where could be fitted into a wider framework, the Government had no hesitation in accepting them. For example, the Government accepted all Akali Dal demands generally referred to as "religious" and have initiated action to implement the decisions. The sale of tobacco, liquor and meat within demarcated areas in the walled city of Amritsar has been banned. Government agreed to arrange for the direct relay on All India Radio of the Kirtan from the Golden Temple. However, the Shiromani Gurdwara Parbandhak Committee has so far denied facilities within the Temple for such relay. Sikh passengers have been allowed to carry kirpans on domestic flights of a size agreed to between the representatives of the Akali Dal and Government. The Government also agreed to consider the formulation of an All India Gurdwara Bill for historical gurdwaras in India and started discussions with various concerned parties.

The demand for the amendment of Article 25 of the Constitution was not included in the original list. However, we did not wish to take a legalistic attitude. When this demand was presented belatedly, and even though it was backed by a highly reprehensible agitation of burning copies of the Constitution, Government offered to consult the Shiromani Gurdwara Parbandhak Committee and other representatives of the Sikh community as well as legal experts, and undertake such legislation by way of amendment of Article 25 (2) (b) as may be necessary to remove doubts on this point.

On the question of Centre-State relations, a high-level commission under Justice Ranjit Singh Sarkaria has already been established. We have informed the Akali Dal that they are free to present to it any submissions on this subject which fall within the terms of reference of the Commission.

The two remaining demands involve the rights and claims of States other than Punjab. These relate to river waters and territories. On the river waters issue, Government agreed to refer the dispute between Punjab and Haryana on the surplus waters of the Ravi-Beas to a Tribunal presided over by a Supreme Court Judge. There was agreement on this at a tripartite meeting between the Government and representatives of the Akali Dal and of Opposition Parties, but

the Akali Dal now seeks to reopen the decisions reached as early as 1955 regarding the sharing of waters with Rajasthan and has also raised the issue of the Yamuna waters.

As regards territorial disputes, I have repeatedly stated that Chandigarh will go to Punjab, provided Haryana gets its share of the some Hindi speaking areas which are now in Punjab. In spite of our best efforts the two States have not been able to reach an agreement on the territories to be transferred. Government had suggested that the whole territorial dispute including Chandigarh and Abohar-Fazilka could be referred to a Commission whose decision should be binding on both States. Unfortunately, the Akali Dal has not accepted our suggestions regarding the transfer of areas to Haryana in lieu of Chandigarh or of reference of the whole dispute to a commission. I have spoken of the various demands of the Akali Dal, and Government's stand on them in great detail only to remove the impression which seems to persist among some people that Government have not done enough to reach a settlement. May I ask, in all seriousness, what more can any Government do when disputes affect more than one State? The reality that has emerged is not the adequacy or otherwise of the terms of settlement offered by the Government on the various Akali Dal demands, but the fact that the agitation is now in the hands of a few who have scant regard for the unity and integrity of our country or concern for communal peace and harmony or the continued economic progress of Punjab. Every three or four months a new morcha is started, and Punjab is torn by a senseless and tragic strife. Terrorists and anti-national elements have gained the upper hand. Innocent people, Sikhs and Hindus, have been killed. There is arson, looting and sabotage. Holy shrines have been turned into shelters for criminals and murderers. Their sanctity as places of worship has been undermined. A deliberate and systematic campaign is spreading bitterness and hatred between Hindus and Sikhs. And worst of all, the unity and integrity of our motherland is being openly challenged by a few who find refuge in holy shrines.

In spite of this vitiated atmosphere we kept talking to Akali leaders in the hope of reaching an understanding. To our great disappointment issues could not be clinched. Whenever a settlement seemed in sight, they came up with fresh demands or hardened their attitude on matters earlier agreed on. The leadership which started the agitation seems to have lost the will and the capacity to control its consequences.

What do we do in this new situation? I should like to clarify two points. First, in spite of all the disappointment experienced during

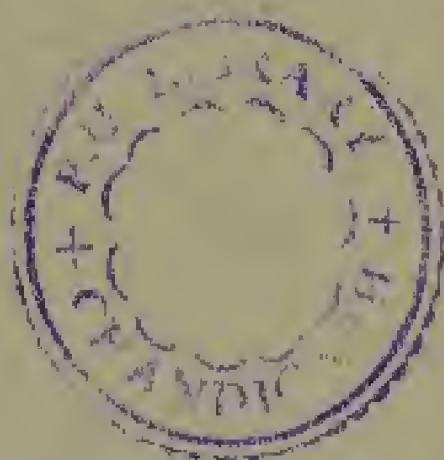
the last two years of talks and negotiations with the representatives of the Akali Dal, I still appeal to them to accept the framework of settlement the Government has outlined. If any misgivings or doubts on any issue remain, let us sit round the table and find a solution. In a democracy the right and only way to settle problems is through discussions. Second, while the Government is committed to solving all pending problems through negotiations, it should be obvious that no Government can allow violence and terrorism any premium in the settlement of issues. Those who indulge in such anti-social and anti-national activities should make no mistake about this.

A special word to my Sikh brothers and sisters, whether they are in the Punjab, the rest of India or outside India: India belongs equally to Hindus and Muslims, Christians and Sikhs, Buddhists and Jains, Parsis and others. All of them have equal rights and must get equal respect and protection. Sikhism itself was born as a faith to bring together people of different religions. The life of Guru Nanak Dev symbolised tolerance. The great Gurus taught love and brotherhood. The moral of the Granth Sahib is truth and kindliness. In the long and glorious age of national independence, Punjab and the Sikhs made a shining contribution. Let not a minuscule minority among the Sikhs be allowed to trample under foot civilised norms for which Sikhism is well known, and to tarnish the image of a brave and patriotic community.

This is not the time for anger. Too much blood has been shed. Violence leads to counter-violence and some misguided Hindus seem to think that this is the heroic way to meet terrorism. There can be nothing more senseless and dangerous than such thoughts and actions. We have to recognise anew our responsibility to the future – a future of which all can be proud. Tonight I ask each one of you to work for this future. The people of Punjab, on whom history has cast great burdens and responsibilities, should think clearly of what lies ahead. Should you unwittingly become parties to the sinister designs of those who want to see India weak, and sinking into chaos and instability? I am deeply conscious of Government's responsibilities but when feelings are high and so much is at stake, it does become the duty of every citizen to cooperate with Government in putting down violence which mars the fair name of the land of five rivers, and in courageously facing up to the fanatics and terrorists. At this juncture another agitation will not bring settlement closer but will give more strength to anti-national elements. Even at this late hour, I appeal to the Akali Dal leaders to call off their threatened agitation and accept the framework of peaceful settlement which we have offered.

Let us join together to heal wounds. The best memorial to those who have lost their lives is to restore normalcy and harmony in the Punjab which they loved and served. To all sections of Punjabis I appeal: "Don't shed blood, shed hatred."

Jai Hind.



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Appendix- 6

Eye Witness Account of 'Operation Blue Star'

We reproduce below relevant portion of the statement of Sant Harchand Singh Longowal, extracted from his interview given to Shri Kuldip Nayar, published in *Sunday*, 31st March' 85.

Q. : If the Akali Party does not condemn the killing of Mrs. Gandhi in the strongest terms, don't you think that it will encourage some Sikhs to think that the politics of murder is justifiable and further, some might attempt to kill more people?

A. : The effect of cruelty (*jabar*) or revenge is not good. Those who indulge in cruelty face similar consequences.

Q. : That means there should be no spirit of revenge.

A. : There is no spirit of revenge in the Sikh religion.

Q. : In that case you should have no hesitation in condemning Mrs. Gandhi's assassination.

A. : Why are we being forced to condemn (Mrs. Gandhi's assassination) when none so far has condemned those who destroyed the Akal Takht and Harimandir Sahib, killed the innocent, burnt children alive, raped women and destroyed hearths and homes. Why is there this emphasis on our condemning Mrs. Gandhi's murder?

Q. : Could you tell me what happened to you on 5 June or during Operation Bluestar? But before you do that, let me check with you something which has been said repeatedly. The day before Operation Bluestar: Did Bhindranwale's men come to you and say that you must announce the birth of Khalistan and did you say 'no' to that?

A. : The truth is that two persons, I did not know, went to Sant Bhindranwale and asked him to announce the birth of Khalistan through the transmitter, they said he possessed. He said he

would not announce that, adding that his policy was the same as that of the Akali Dal. He said: 'If you want this to be done go to the Akali Dal Chief. He is the only one who can do it. If he does it, I shall also do so.' Later those persons came to us and asked us to announce the birth of Khalistan. They told us they had been to Sant Bhindranwale. We asked them what they had told the Sant. They said that if Sant Longowal were to announce it, he would support it.

Q. : How true is the story of Comrade Surjit (the CPI-M Politburo member) that Bhindranwale had asked you to announce on the transmitter, the establishment of Khalistan?

A. : Harkishen Singh Surjit was making two attacks with the same sword. On the one hand he would call him (Bhindranwale) a traitor and on the other hand he would praise him. I can say with authority that Bhindranwale had no links with Pakistan, nor with the CIA. My argument is that if he had connections with the CIA or Pakistan – and this was meant to make him fight against the Indian government – he (Surjit Singh) would not have separated me from Bhindranwale; he would have kept us together. The real thing is that the RAW was working there, the Government of India had planted some people; they were neither Bhindranwale's men nor ours.

Q. : Can you give the sequence of events?

A. : On 1 June we complained to the Governor about the firing at the Golden Temple. He said he had no hand in it and that whatever happened, it was at the Centre's instance. We told him that he was responsible for Punjab after which he did make efforts – he contacted the local Deputy Commissioner, Superintendent of Police, Inspector General and Deputy Inspector General of Police and informed us that the firing had been stopped. We told him that the firing was continuing; he said it was from inside. I told him it was my responsibility if it were so and that no firing was taking place from inside, all the firing was from outside. After several hours he was able to have the firing stopped. On 2 June the Sikhs found Harimandir Sahib pockmarked by bullets; it had been hit by 36 bullets fired from three sides and this infuriated every Sikh. On the evening of 2 June, Mrs. Gandhi made the statement over All India Radio, on 3 June the entire Punjab was sealed off. Till then no one, neither the Punjab government nor the military, had told us that they wanted to arrest anyone; they did not say that if they

were not allowed to make arrests, they would fire. The government did not say it wanted to arrest Sant Jarnail Singh Bhindranwale. It never said that. On 4 June at four or five in the morning the first bomb fell on the Akal Takht, a big bomb. After that there was continuous firing with machine-guns, stenguns. The firing was so heavy for three hours that nobody could hear anything. All the people stayed where they were. Many of them had come from outside as that was the day of *gurupurab* of Guru Arjan Sahib. The firing continued on the 4th all day long. There was firing on 4 and 5 June at night, there was heavy firing. In the evening I went to Samnudari Hall, there were about 500 people, the *satyagrahis* who had come for the *morcha*. After getting them together, I went to Tohra's room. He told me that he was then about to come to my room. There were seven or eight other Sikhs. The sun set at that time. Tohra Sahib said his prayers. Then there was such heavy firing that no one could move out. On the 5th there was no water, no food, the tank had been destroyed, no one could go out to fetch anything because there was continuous firing. I think that by 5 June night, by 10 p.m., the army had occupied the entire area, tanks were stationed on the middle road, they were continuously firing on the Samundari Hall, Guru Nanak Niwas, Guru Ram Das Sarai, then they went to the *parkarna* and by about 3 p.m. occupied Guru Ram Das Sarai.

Q. : When did they arrest you?

A. : The same day on the 6th morning. Later they arrested all the volunteers in Samundari Hall. After doing that they came near our room and threw the first bomb. They said: 'You are under arrest and, therefore, offer yourself for arrest.'

Q. : Did anyone of Bhindranwale's men tell you at that time not to offer yourself for arrest, otherwise they would kill you?

A. : This is not true, no one told us anything like that. In fact, Harminder Singh Sandhu, Mehta and Manjit Singh – Sant Bhindranwale's men – were sitting with our men till the evening. If they had wanted to harm us they could have done it any time. Really speaking, this was the rumour spread by the RAW; the government wanted to kill us and attribute the killings to them. This propaganda has been done by the government. Tohra Sahib, I and others told the army that we were prepared for the arrest or to face their bullets, and to do whatever they wanted to do.

Then they took us to the "executive's" room – in the process two of our Sikh colleagues were hit by bullets – and posted guards armed with machine-guns. This created an ugly situation. The volunteers, including the women of the *jatha*, stood between us and the army men, thinking that we were facing a firing squad. It almost came to a fight. We intervened and told them to allow us to offer ourselves for arrest. We said: 'If they want to kill, let it be; everyone has to die. After killing us, they will kill you. Now you should not do anything.' They were pacified. After 15 minutes, the leaders of the troops said that the buses had come and all the Sikh *jatha* would be taken out. Tohra Sahib, I and seven or eight others were confined to the room. We were not allowed to go out, nor was anybody allowed to meet us. At that time at least 600 people were there. After half an hour, the troops gave a "fauji sign" that they would throw a bomb. One military man among us told us to lie down because they would be opening fire. He himself lay down but others watched the fight. They opened fire and began to throw bombs. Some people were killed by bullets and some by bombs. Some were arrested and shot while under arrest. And subsequently, it was given out that the boys of the Sikh Students' Federation had thrown the bombs from outside but those boys were sitting with us. We did not know the details because we were away from the place of the incident and there was a lot of noise. Then at 11 p.m. there was a big noise; some people came running to us. We also shouted and told a colonel, who reached the spot that he should be ashamed of himself. If they wanted to kill us, we were all ready; but was the army meant to kill the public, the people of their own country? We said, "You are committing a crime by killing the people after arresting them." This had its effect; the firing stopped. Down below in the basement, many *bhaiyas* stay, 2,000 to 3,000 of them: they eat at the *langer* (free kitchen) and spend the night there. Because of the emergency they stayed there. They too were shot. They were not Akalis, Sikhs or extremists; they were either beggars, labourers or rickshaw pullers. We asked the troops why they were killed; they said that they had to complete their quota. In the evening at five, we were taken to a bungalow at the troops' headquarters and guards were posted there. We were warned not to stir out because their instructions were to kill anyone who came out. We stayed in the room. This was on 6 June; we were kept there, also the next day, the seventh. On 8 June, we

were told that we would be taken to jail. We asked them where; they said they could not say. They took Tohra Sahib to Jodhpur and I was taken to Udaipur.

Appendix - 7

Army's Version of Blue Star

It Was A Difficult Task

— MAJ. GEN. BRAR

(Excerpts from the brief by Maj. Gen. Brar to the journalists who visited the Golden Temple on June 14 to see for themselves how terrorists operated from within its complex and outside and how the Army performed its task of flushing them out.)

I was told to flush out the extremists from the Golden Temple with instructions to cause no damage to Harmandir Sahib and to avoid as much as possible any damage to Akal Takht. I was to use minimum force for achieving this objective to avoid bloodshed. I was also to try and prevent internecine fighting between the Bhindranwale and the Longowal followers. This was the broad mission assigned to me. The very ideas of forcibly entering the Golden Temple shocked me. Therefore, I thought: Was there any other means to enter the Golden Temple? Two ideas struck me. The first was: Would it be possible to lay siege around the Golden Temple complex and compel the terrorists to come out by starving them?

From the military point it was impossible. Because no amount of troops could have cordoned off the whole complex which is very closely built and has passages underneath. Besides, the buildings around the complex were also in the firm control of the extremists. Therefore, the effective sealing off the Golden Temple was doubtful.

Secondly, there was a huge amount of foodgrain stock and war-like arms and ammunitions inside the complex. Then, there was the Sarovar which could have provided water to the extremists. Therefore, idea of starving them and forcing them out too was almost impossible. We also knew that they had plans to incite people to come to the Golden Temple to help and support them. This would have prevented

any effective action to flush the terrorists out. Therefore, with great sadness in my heart I came to the conclusion that there was no other way but to enter into the Golden Temple.

The first condition that we lay down for ourselves was that we would cause no damage to the Harmandar Sahib at any cost. I warned my troops that even under extreme provocations from the terrorists, the troops would not fire towards the Harmandar Sahib. But there was every danger from the extremists. Those who were using the Golden Temple for murders and robberies, could have done anything. When they could use the Akal Takht for such purpose, they would even not desist from damaging the Harmandar Sahib, I thought. I felt that it could not be ruled out. Therefore, I requested my corps commander to take devout soldiers for the task. We had planned to swim to reach the corners of Harmandar Sahib.

Our next important task was to reach the Akal Takht. The terrorists had put up sandbag defences at every terrace. Therefore, any plan to clear the extremists out the Akal Takht without causing any damage to it was almost impossible. Nevertheless, I requested the corps commander that he should see that the troops in the initial stage forbid even rifle or automatic firing. Secondly, I suggested him to use tank search lights which are so powerful that it leave a man almost blind. I also suggested to use non-lethal police gas and about 100 canisters of the gas with 200 gas masks were made available to the troops. The intention was to go in the Akal Takht area using the non-lethal gas to incapacitate the extremists. We had also planned to enter the Akal Takht using only stungrenades, which are nothing but fire crackers that produce a blast. We had planned to use stungrenade because it would have caused no structural damage to the Akal Takht.

I had also planned to send a party of fire extinguishers just behind the stungrenade party in order to extinguish any fire the stungrenade might cause to the Akal Takht area.

The operation began on June 5 evening. First, some of the stalls, which were overlooking the main Temple entrance, had to be eliminated in a parallel operation. It was done slowly on the 5th evening. The very evening I had to launch a parallel operation to secure the Hotel Temple View and to secure the Akhara view. I also had to remove the top portion of both observation towers and the top portion of the water tank because these were very heavily fortified with machineguns and they would not have permitted any movement of my troops even if we had approached the areas from which we were to launch.

As far as the other buildings under extremist occupation were concerned, I decided to leave them alone. I did not have the resources to deal with them but I did have to put up cordon all along the Golden Temple complex with an infantry battalion and equipment from paramilitary forces. The idea of cordon was to prevent any extremists from getting away from the Golden Temple complex in small bits because it was possible for some of them to step out of the building.

As far as fortification was concerned, the roof tops, the first floor, the second floor, the ground floor, and all parts and buildings of the Temple complex were heavily fortified. They had bunkers, they had fire trenches and they had converted all doors and windows into fixed defences. I realised that even the approach to the Golden Temple complex would mean heavy casualties. In fact, the Temple was fortified into an impregnable bastion.

In addition to fortification in three tiers – the top, middle and the bottom – the extremists had also defences in the basement. From the basement the extremists emerged from the manholes. They go round to cover verandah through these manholes, open fire at my troops, went back to these manholes and re-emerged into a room some 50 metres away to get into action again. They also used staircases leading from the ground floor and the top floor and fired on our position. They even used the main staircase of the main entrance. To reach the Parkarma one had to climb some steps and in this part were concealed fire positions on either side of the staircase. Even before the operation really got on the way, I saw several casualties on the staircase without realising who was firing at us.

The Akal Takht, as brought out earlier, is offset. But eventually it was discovered that it had a machinegun bunker at ground level. Troop movement from any direction came under very heavy fire from the Akal Takht.

As we tried to enter the Harmandar Sahib complex the extremists fired at us from all openings coming out of the Harmandar Sahib. We had kept our force in reserve on the southern side. I had isolated the area on the eastern side and I had taken only one infantry battalion for this entire complex because basically this was the complex which houses pilgrims and innocent people. But in this part also there were militants.

The Babbar Khalsa men, who were very well-equipped, were in this area. By isolating this area from the main complex we were able to achieve the aim and at the same time by the use of minimum force, with just one infantry battalion we were able to secure this area with minimum damage and loss to extremists lives.

Longowal and Tohra when surrounded gave themselves up. They did not put up any fight. But the extremists who were in this area and had lodged themselves on the top of the building did fight with our troops. They fired on us from all directions. We suffered heavy casualties in this area. But eventually when they found they were outnumbered, they gave in.

However, in the main Temple complex we received pitched battle. Our progress towards the Akal Takht was extremely slow. My commandos, who were to lead the infantry and to reach the Akal Takht at the earliest, started suffering heavy casualties. The battalion which was earmarked from both sides of the main entrance suffered very heavily. Twenty troops died and 60 were injured in between the right gate of the main entrance and the left gate of the main entrance. I realised that it was difficult for this battalion to progress operations any further. A part of the terrorist was on the ground floor level and unless they were forced to go to the first floor or to roof top, it was difficult to bring the situation under control. Besides, until the extremists would remain on the ground floor, we would suffer heavy casualties. In spite of heavy odds against them my commandos had to take control of this area. I must give credit to the battalion commander, a very dashing soldier, Lt. Col. Asrar Khan who rallied his strength together and worked his way out. As commandos reached the entrance area of the Akal Takht, the terrorists hiding in manholes started suffering casualties. Now the extremists from the top started lobbing grenades on troops. The grenades they used were deadly, and inflicted heavy casualties on us. However, the commando battalion did succeed in getting into this particular area.

Now the commando task was to work their way towards the Akal Takht. When they attempted to move further, they came under extremely heavy fire and opposition from the extremists. Consequently, they were not able to make much headway. The commandos had the toughest deal heading for the Akal Takht and they had to get into the scaling ground at the earliest. In this scaling ground they suffered very heavy casualties. But they had to move on. There was no way out to retreat. There was no way of getting back. I asked them to either take a lodgement on top and press on towards the Akal Takht. I was coming at this stage from across on the southern side. So I was coming from the Harmandar Sahib side and fire was coming from the Akal Takht direction. Now my officers were asking for permission to return fire. Returning fire would have meant taking Harmandar Sahib in the line of fire. Therefore, a very difficult order had to be given to them that they will not return fire on anything which will

endanger Harmandar Sahib. A very tall order which my troops cared to endure. Similarly, when the commandos and the troops came under heavy fire from the Akal Takht, I once again received a request that we would now have to fire towards Harmandar Sahib. Once again they were told not to do this at any cost. At this stage, the two companies (half a battalion) which were already engaged in the battle were joined by the other two companies. These two companies were kept in reserve. The two were under the command of Brig. Dewan, a Vir Chakra decorated officer. He was given the task to somehow link up with the commandos who were already suffering heavy casualties. I must say he did a splendid job. The reinforcement eased pressure on the commandos and as a collective measure the troops managed to close into the Akal Takht.

Now came the situation when the extremists became desperate and started extremely heavy firing from every side. The forces, trying to close into Akal Takht, were engulfed in the firing. Obviously, troops suffered very heavy casualties at this stage. Now I had no other alternative but to move armoured carrier, known as Scot which moves on wheels, hoping that it would have psychological effect on the extremists. I had thought once the extremists would see it, they would give up the pitched battle. On the contrary, the armed personnel carrier was knocked out of action by anti-tank weapons fired by the extremists from the Akal Takht. I realised that the Akal Takht was not only fortified with machineguns, rifles and all sorts of other weapons, but also with anti-tank weapons. Now a tank was brought to scare the terrorists. Even this failed to have any effect on the terrorists. The terrorists continued to fire on us.

However around 4.30 a.m. on June 6, 30 soldiers managed to get into the Akal Takht. The battle continued for another two hours and the extremists fought to the last man. Ultimately, the firing stopped. When we reached the basement of Akal Takht we found the bodies of Bhindranwale, Amrik Singh and Shahbeg Singh. Bhindranwale was earlier on the second floor of the Akal Takht. He first came down to the first floor and then to the basement where he died.

The Temple Layout

The Golden Temple is a huge complex. At its north is the Jalianwala Bagh of historical fame. Then close to the Golden Temple complex is the Hotel Temple View and Akhara, two observation towers, a number of buildings, a very high water tank, Guru Ram Das Sarai, the SGPC office, Guru Nanak Niwas, a workshop, Baba Atal Gurdwara, Manji Sahib, the Akal Takht, the Nisan Sahib, the

Holy Sarovar, the Toshakhana gate from where there is a pathway going up to Harmandir Sahib, the Parikarma all around the Sarovar, the main entrance in the north and similar gate on the south.

Besides, there are a large number of houses with small winding lanes like Chandni Chowk in Delhi all around the Golden Temple. The area is very congested. There are even three-storey buildings in the area. Some of the houses outside the Golden Temple were also occupied by the extremists to watch any movement against themselves. The Hotel Temple View which was occupied by the terrorists, had become a good observation post for the extremists. From this point they used to watch the main entry of the complex. From the two observation towers, approximately 80 ft high, the extremists were able to observe the whole area around and were able to fire accurately. The langar is a three-storey building and its every floor (the ground floor, the first floor and the top floor) were heavily fortified. The Guru Ram Das Sarai building – a three storey building having about 80 to 90 rooms generally housing pilgrims but now full of extremists – had holes to fire on us.

The SGPC office is also a three or four storey high building. Mr. Longowal and Mr. Gurcharan Singh Tohra were putting up in this building. The Guru Nanak Niwas has over a hundred rooms in which a number of pilgrims were living. But then the building was under the extremists control. Baba Atal Gurdwara, not really located in this complex but dominating the complex, was also fortified. Manji Sahib, an open hall with a roof is basically a place where people gather to listen sermons. Its roof was also fortified. Three sides of the complex, that is the northern, the western and the southern sides, were also fortified.

The western side basically separates the main hall in Temple complex. Temple Complex which besides the Golden Temple consists of other offices, workshops, ashrams, dharam sabha, langars etc. A gate also leads to the Golden Temple complex from this side. All the gates have very prominent domes and were heavily fortified. The Parikarma, approximately 40 feet wide, is the area where the people visiting the Golden Temple walk around to pay their homage. Then is the Sarovar, which is 20 to 30 feet deep with continuously flowing water inlet as well as an outlet. Water is drained out only after a long period of 30 to 40 years.

The Akal Takht has a basement down below the ground floor, beside the first floor, the second floor and the roof. This was the main seat of the militant groups of Gen. Maley, Amrik Singh, Gen. Shahbeg Singh and all their lieutenants. This is the place where

the headquarters of the militants actually was. Besides, the Akal Takht is offset. It is not in line with other buildings. It is offset and there are buildings which hamper any approach towards the Akal Takht. Then there are some buildings very closely located behind the Akal Takht which were also occupied by the terrorists. These buildings are so close to the Akal Takht that it is possible for some one to use a ladder to reach the Akal Takht building from these areas.

The gate, where the Toshakhana is, also had fortifications. On top of it, is a part of the Akal Takht which we call Kotha Sahib. Kotha Sahib is a very sacred place inside the Akal Takht where the Guru Granth Sahib is kept every evening. In the morning it is brought back to the Harmandir Sahib.

This is the layout of the entire Golden Temple complex where army had to operate. Indeed, it was a difficult task.

Appendix - 8

Nightmare of a Naik

For the first time in the history of independent India, the army was called out to fight its own countrymen. The largest unit – the Western Command – was put on duty. One core, comprising one lakh army personnel were assigned the difficult task. A Naik of the Kumaon Regiment, who participated in Operation Bluestar, narrated the events of the fateful night of June 5 and 6 to *Probe*. Relieved to be returning home safely, he recounted the gory details while sitting in the first class compartment of the Amritsar-Howrah Mail.

“By June 5, H.S. Longowal and G.S. Tohra had surrendered, but our main target was still in hiding. As the sun set, the commandos were busy working out a plan of action. After midnight a troop of 30 *jawans* went forward, hoping to get nearer the Akal Takht. But they ran into heavy firing from the terrorists. Seventeen of our men fell to the rain of bullets while the others lay on the *parikarma*, injured. The next batch of 30 who went forward met with the same fate. “The silence of the night was broken by the rattle of gunfire and the wailing of some of our *jawans* who lay helpless on the *parikarma*. The three *jawans* who were caught by some terrorists were thrown back into the *parikarma* with their eyes gouged out. We were helpless, we couldn't go forward to help them. At this point of time General R.S. Dyal lost his cool and ordered that tanks be moved in. It was only after the tanks – seven of them – went into action that we got some sort of a hold over the extremists.

“The firing from their side was intense. And we had to shoot back in the darkness without being able to pinpoint our target. Anyone seen running was shot. In the process, a lot of men and women also died. We were shooting at our own *jawans*. About 50 of them died of bullets fired by us.

“When the firing from most of the extremists' fortifications had been quelled, there was still a heavy rain of bullets. For a

while, none of us were able to discern the source. Then one *jawan* spotted a woman who was lying down on the roof of one of the buildings with a LMG in her hand. He scrambled towards her and dug a bayonet into her spine. We had been ordered to shoot not to kill but the angry *jawan*, on seeing his comrades being killed, was provoked to kill the woman by repeatedly stabbing her with the bayonet.

"The bodies of Bhindranwale, Shahbeg Singh and Amrik Singh were found in the Akal Takht. Bhindranwale's cheek had been hit by a HE-36 splinter.

"On the morning of June 6, the Golden Temple complex was like a graveyard. Bodies lay all around in the buildings, on the *parikrama*, in the *sarovar*. The sun was shining and the stench from the bodies was becoming unbearable. Bodies of *jawans* were identified and handed over to their respective regiments. I myself, carried the bodies of three soldiers on my shoulders. Each regiment conducted the funeral rites of their various *jawans*.

The civilians who had died, about 1500 of them, were piled in trollies and carried away. A lot of them were thrown into the rivers.

"The battle was a tragic one. I couldn't eat anything. Food made me sick. I used to just drink lot of rum and go to sleep. I am glad now to be relieved of my duty in Amritsar."

— *Probe India*, August '84

Appendix - 9

Pools of Bloods

— AJIT KAUR

Khushwant Singh has just returned from Amritsar. He is breathing fire. He says: "Three hundred bullets have hit Sri Darbar Sahib, a blind musician was sitting inside and was hit there by a bullet. His body was dragged out and cremated with the rest of the dead but the carpet on which his blood had been spilt could not be cleaned. It was wiped, washed and scrubbed but the flies would again come to the spot. Also the stench got worse day by day. So the army had a piece of the carpet cut out and replaced by a similar piece."

I wonder. Pools of blood have been created in our hearts. No matter how hard we try to mop up the spill, there is no way to clean the blood that has soaked in. Time will perhaps wipe or wash away the blood but the spots will be there forever. The smell of blood will gradually become a stench. The flies of boiling anger and helpless rage will again and again visit the same spot of blood.

Not me alone but every Sikh wishes to ask those who have power and who by exhibition of that power have assured themselves the Hindu votes in the next elections: "What are you going to do about this stinking spot of blood in our hearts. How will you cut it up with scissors and patch it with a new piece?"

Nirupma Datt has written a poem in which she says: "Today in every home in the Punjab every mother, every sister, every wife is turning her spinning wheel in reverse direction because someone has said that doing this brings the men who have gone away, back home." Every third home reports someone gone to Amritsar. The people at home do not know whether he is hiding somewhere, is underground, has gone to some other city with some friend, or has been killed. It is hard to estimate the number of those killed. The army reports about seven to eight hundred dead. *Times* (London) reported that the army cremated thirteen hundred and fifty bodies. Satinder Singh of "*The Tribune*" says: "In the entire *parkarma*, there wasn't an inch of empty space. The corpses were piled over each other. At places they were packed so close that the arm of one was touching the arm

or leg of the other. In the darkness of the night truckload after truckload of dead bodies was taken to seven or eight different cremation grounds. There they were piled in a heap and cremated. In the crematorium at Chatiwind alone nine hundred and ten bodies were cremated. I was told this by the man in-charge."

"By this count...?" my voice quivers. Trying to figure out the number of total dead I feel angry at myself for being alive.

"I cannot estimate correctly, but there were thousands", he says. In the eyes of this tall and tough man there are tears of blood.

Then he adds: "Doesn't matter. From 1707 till 1791, two hundred thousand Sikhs were killed. The same Bungas of Harmandir Sahib have been destroyed four times and each time, they have been rebuilt. The Sikh was created to be a martyr."

When this holocaust took place, I and my daughter, Arpana, were in Athens. Someone watched the news on the television and told us: "The Golden Temple has been invaded."

Military invasion? Is the Golden Temple Goa or Dacca that the army had to invade it?

Then we remembered Khushwant Singh's repeated warnings in the Parliament: "If the army enters the Golden Temple, there will be a bloodbath. There will be a lot of bloodshed. Find another way. Negotiate. Try to solve the problem."

And the oft-repeated words of Indira Gandhi: "The army will not be sent into the Golden Temple."

Now what?

It all seemed like a Greek tragedy. Greek tragedy in the real sense where all the actors know they are moving towards the horrors of death, but some power or the god of death himself pushes them inexorably to their doom.

In this case that mysterious power was perhaps Indira Gandhi herself. Coming to think of it, appears she alone knew of this doomsday and how it would be enacted. One wonders if it was a preplanned and well thought out doom.

BBC News...every hour...the attack, tanks, guns, gunpowder, the dead....

A news item in the *Times*... "Among the dead were a number of women and children."

Every Greek friend was being specially kind to us. They were sorry for us as if they had come to offer condolence at some bereavement.

But every member of the Indian Cultural Group which included only two Sikhs, myself and Arpana, was only talking about the weapons,

that Sant Bhindranwale and his followers had collected inside the Golden Temple. They were saying: "What could poor Indira Gandhi do?"

Arpana was tearful with anger and she was showing them the news in the *Times*. A news item: "Among the dead were several young men whose hands were tied behind their backs and who had been shot in the forehead. Another news item: "Among the dead were women and children". "What crime had the children committed?" Arpana asked them.

Harish Awasthi of All India Radio said: "Are you sure they were innocent?"

Arpana could not take it from him. She shot back: "What do you mean? If children are not innocent, what are they? Corpses of children!"

I brought her into our room. She was crying. I said: "Didn't you say I never will stay anywhere outside my country? This was because outside one's own country one has to live as a second-class citizen. But in your own country, every minority has to become second-class citizens. We shall have to think it over now."

We returned and noticed a strange division. Every Hindu was saying that the army action was the right thing to do and only talked about the arms collected inside the Golden Temple. Every Sikh was talking about the bloodbath that took place at Harmandir Sahib.

Leave aside others. Toshi, my dear friend of thirty years said: "But Jeet, there was so much ammunition inside. Why had they collected all that?"

"I do not justify their ammunition, their machine guns, their rifles. It is wrong to keep the means of death in any gurdwara or temple. But if at the time of the partition of the country, you had been on the other side of the border at Wagha you would know that this too is a manifestation of fear. They should not have done this. If they had to fight, if they had to defend themselves, they should have done it elsewhere and not in Harmandir Sahib. Nonetheless, an army invasion like this! As if they were invading another country. Isn't it dreadful they killed everyone inside?"

"But you know that from the pool, a large amount of gold ornaments were recovered. The ornaments looted in the dacoity in Karol Bagh were also found among these."

"Alright. Were those ornaments engraved with the names of the people of Karol Bagh? Also, did you go and see those recovered from the pool?" I felt very angry.

"Why are you fighting me! TV, radio and newspapers all give the same news."

"Why shouldn't they? TV, radio and official newspapers belong to big industrialists who have to get licences from the government every other day. They have to blow the government's horn."

She fell silent but, in thirty years, I realized, for the first time, that Toshi was a Hindu and I a Sikh. For this reason we were thinking quite differently.

What have these beggars for votes done to us? What game have they played? The board has split right down the middle.

History will not forgive them for creating this dividing line in the Punjabi minds.

Daily, the government was busy justifying its military action over the TV and the radio. It was trying its best to prove that no bullet had been fired at the Golden Temple.

Akal Takhat? According to the government, there were gun emplacements in the walls. The powder caught fire and so the building got destroyed.

Even among those entrusted with the military duty, there would be some who would flinch at the fearsome dance of death. Of these, one officer told Khushwant that the top of the Akal Takht building was blown off from a distance by armoured tanks. After that perhaps a fire started inside. Sant Bhindranwale and all his followers who were inside came out. All the fighting took place in front of the Akal Takht over the bloody *parkrama*. Sant Bhindranwale was among the first to die.

He also said that all died singing *sabads*. Yes, my friends, only those are called martyrs who die this way, defying death and singing *sabads* in the face of a hail of shots from the tanks.

And all of us peace-loving people who had been speaking against Sant Bhindranwale's terrorist activities and had been criticizing every needless murder committed in the Punjab have to stand in silence today before the death of these persons who died facing the tanks. If these persons were murderers, and criminals, the responsibility for making them into murderers rests with the government. Forcing them into Harmandir Sahib was also a part of this scheme. Arresting Sant Bhindranwale with a lot of fanfare and then releasing him was also a part of this plot. Later, not arresting him during a period of at least a year and a half and taking the circumstances to such a climax seems to be a carefully planned strategy.

"But Satinder was saying the fighting went on for two days and two nights!"

"Even after three days when Giani Zail Singh visited, the sound of gunfire was there. All of us heard those sounds on the

television. Yes, we did hear them. Under the entire *parkarma*, there are residential basements. There were hundred, perhaps one and a half thousand, men in them. They were firing from openings and manholes. Later, these basements were blasted by the army. Even now it is frightening to walk over the *parkarma*."

It gives me chills. Walking over decaying dead bodies! My God! Madan Gopal Singh has just come from Amritsar. He says he met two of the workers who cleared the *parkarma* of the dead bodies. They were saying, "It was the first time in our lives we had seen so many corpses. The military personnel asked us to load these dead bodies onto trucks. We were allowed to drink as much liquor as we wished. Without liquor it would be impossible to stand so much blood and so much death."

He (Madan Gopal Singh) says: "There are 462 bullet marks on Harmandir Sahib. Four persons were killed inside Harmandir Sahib and the copy of *Guru Granth Sahib* on the upper storey was burnt." "How many persons you think died there?"

He says: "It is hard to estimate, but certainly thousands. Of these only a few would be extremists. This is all I could figure out because some of them escaped by jumping over the roofs of the houses that have been built on the backside. Most of the dead were villagers who had come along with their women and children to observe the gurpurab. June 2nd was the 378th anniversary of the martyrdom of the fifth Guru of the Sikhs."

"But the government says that before (the invasion) the army had used loudspeakers to ask people to come out."

"Yes they did make such an announcement before attacking Darbar Sahib even though the attacks on gurdwaras in other places took place without any warnings."

Only day before yesterday, Anoop's sister was telling us about Sri Dukh Niwaran Sahib. Their home in Patiala is located just opposite this gurdwara. She said: "It was a Gurpurab. Thousands of people from villages had come. Generally, most people who do not return to their homes in the evening eat at the *langar* and sleep at the Gurdwara, planning to return home after listening to the morning *Kirtan*. At midnight the machine gunfire started. We were surprised and turned on our lights but there was no electricity. We checked the phone. That was dead too. The army had cut off electricity and phone connections for the entire area before attacking. There was no firing from the inside of the gurdwara. How could there be? The

people were running around in confusion. There were screams, noise and the incessant sound of gunfire. Well, when it was all over, they loaded the dead onto several trucks in our full view. We were glued to the window panes, watching and trembling at what we saw. It was such a horrible sight. The dead were being dragged like sacks and loaded onto the trucks. It was all darkness, it was doomsday. We have felt miserable ever since. There was the curfew. Now it has been relaxed somewhat and we have come to Delhi. It was hard to swallow food. We couldn't sleep at night. Even when we did sleep we had nightmares and heard the sound of gunfire.

I asked Madan Gopal: "Why didn't those people come out?"

"They were simple country folk. They probably felt that if they were out with their families, they might be arrested by the army outside. Inside they were in the house of Guru Ramdas. How could any calamity befall them there?"

* * *

I am sitting in a scooter rickshaw. The rickshaw driver is a Sikh young man. I started a conversation: "Son, where are you from?" He answers: "From Baba Bakala, Madam."

"Are you aware of what happened in Amritsar? Do you hear the news?"

"Why wouldn't I know? For two days we did not cook any food in our home. My mother still keeps on crying. Every morning, after *Paath*, my father mentions the names of the martyrs of Amritsar Darbar Sahib in the *Ardas*. These people who have committed such atrocities cannot survive for long." He keeps on talking, full of anger, full of sorrow. "What is going to happen now?" he asks.

"I don't know," I responded. I am telling the truth. I do not know what will happen next.

He says with great confidence: "Now certainly Khalistan will come into being. So much bloodshed cannot go waste."

I tremble. What have they done, the producers of this Greek tragedy? There were only a couple of persons living in foreign countries who, to draw attention of the Press and others to themselves, talked about Khalistan or under the cover of this demand were trying to get their brothers and nephews to come out to England or Germany. No right thinking person ever took Khalistan seriously. It was not a

demand of the Akalis when they launched their agitation in 1982 nor did Bhindranwale at any time adopt this as his slogan.

What has happened today?

Is it a demand of a hurt "psyche", or of "identity"? I hear this word every day from both kinds of people, well educated as well as simple folk.

This was the mistake the creators of the drama made. They had merely played the game of votes, the humanity and psychology of which is understandable even by non-political persons like myself. Just as Margaret Thatcher used the action in the Falklands to win her second term as Prime Minister, as Reagan acted in Grenada, as Indira Gandhi herself enacted the Bangladesh affair, this too was part of strategy because the elections were near. Coming to think of it, the Akali Party too must have thought of the elections before starting the agitation. Every political party thinks of the elections. The people? The common man? Who are they? They are only the count of votes or the fuel to be fed to the fires of riots and wars. Indira Gandhi had seen the dreadful defeat of 1977. The wounds of defeat in the southern states after she returned to power at the Centre, still hurt. The government needed the enactment of such a drama for the elections. It was for this reason that for the last two years, whenever negotiations appeared to succeed, she would either herself say something harsh in the Parliament or get Home Minister, Sethi, to do the same. In any case the negotiations would break down just as they appeared to come to a successful end.

In any case what was the substance of it all? In August 1982, when the Akalis started the agitation, the demands were entirely economic. The religious demands were only an embellishment. These were accepted too. But the economic demands were for all Punjabis, Hindus as well as Sikhs, viz., the demand for Chandigarh, the demand for water, and the demand for consideration of the issue of Panjabi-speaking areas. Out of these, the Akalis had agreed to refer the issue of water and the Panjabi-speaking areas to a tribunal. That left the Chandigarh issue. In lieu of Chandigarh, they were willing to give to Haryana some villages near Chandigarh as well as financial compensation. What was it that prompted the government to put obstacles in the way of such a reasonable demand?

One can only speculate. (Everybody says that not even the air that Indira Gandhi breathes knows what goes on in her mind. How can anyone else know anything about it? No one can tell what plans she is making but that cannot stop us from guessing). Many people think that this game plan had been carefully thought out. This Greek

tragedy had been carefully delineated in her mind and then performed on the stage. You must have read Harkishan Singh Surjit's article in "*Aarsi*" to learn how each negotiation was broken up. No agreement was allowed to be reached because the government knew that by letting matters linger the problem would not be solved. It could only get worse and gather momentum. It was known that when the agitation gets strong and there are some deaths, people will collect weapons in Harmandir Sahib and there will be greater apprehension among the Hindus. The leadership will pass from the moderate Akalis to the militant Sant Bhindranwale.

At that stage, either the two groups will start infighting and sending the army, with great fanfare, into Harmandir Sahib, to restore peace will win laurels for the government. Or, if they don't start fighting each other, military action will be taken for the sake of peace "outside", and the Hindu population of the whole of India will say: "Indira Gandhi saved the nation or else..."

Hindu votes will be in her pocket. Victory in the next elections would be assured.

What sort of statesmanship is this? What is this intoxication of power that makes a person walk over dead bodies and his conscience remains silent?

Appendix - 10

Golden Temple after 'Blue Star'

My Amritsar Diary – A Bizarre Experience

– SARAN SINGH, I.A.S. (Rtd.)

After June 1984 I had vowed that I shall visit the Golden Temple only after the Army occupation is vacated. Last week, some four months after the holocaust in Amritsar, I was able to pay my homage at the holy shrine unhindered by the stengun toting *jawans*. The Government media and glossy magazines have lately waxed eloquent about “the splendidly restored” Akal Takht and perceived in it a “glimmer of hope” for the normalization process. I was, therefore, filled with concern as well as curiosity.

My first impression on entering the sacred precincts was one of oddity and incongruity. Admittedly the repairs of the Akal Takht had been carried out in desperate haste by agencies (the N.B.C.C., the C.P.W.D., the Skipper Construction, etc.) who have little concept of the historic past of the Sikhs and even less of the noble structure that the Army had destroyed. They have none of the devotional spirit that characterised the original builders. As for the Nihang Baba who had been given the charge of repairs the less said the better, for he was nothing but a puppet. Much as I tried to ignore the ruins in the periphery, the piles of rubble hit the eyes as a grim reminder of the Army action. As for the building proper the mixture of old and new makes the Akal Takht a bizarre spectacle!

I was struck and saddened by the fact that hundreds of murals on the walls of the Akal Takht which had depicted the history and parables about the Sixth Guru Sri Hargobind Sahib, had been wiped out. Two frames have, however, been retrieved and crudely empanalled in the marble wall on the front facade. Also head a mute testimony to the vandalism of the Indian Army as well as the ineptness of the Government contractors.

I had gathered that the N.B.C.C. and lesser contractors spent close to 10 crores on the repairs. Except for the gold that glitters unevenly on the dome and the two balustrades of the front facade,

there is scarcely any evidence that the funds of this order have been spent unless one take into account a total disintegration of the marble stones and destruction of the interiors and unless it is conceded that the *sarkar seva* carried out by the Nihang had actually been through paid labour at exorbitant rates for daily wages. Even then the claim seems to be too tall to be accepted. There is reason to believe that, for one thing, Government was in panic, desperately anxious to restore the Akal Takht to a semblance of its historic reality. For the other, the job had to be completed in precipitate hurry. In consequence what has emerged may bear superficial resemblance to the unique and hallowed original structure (which was, even by the Seventeenth Century standard, an impressive and avocated architectural achievement) but lacks in the power of spiritual impact. The new structure looks strangely askew, incongruent, ungainly and aesthetically inadequate.

The Darshni Deorhi still bears numerous scars of the Army's indiscriminate fire power. Though the main two sides have been painted in acrylic white, the whole aspect hardly harmonizes with the handiwork of the artisans employed by Maharaja Ranjit Singh 150 years ago. In the circumstances prevailing I had no opportunity to view much less to verify – the state of the treasure in the *Toshakhana*, including the bejewelled canopy which I had last seen in another capacity in April 1981. One hopes that the invading soldiers have not purloined the valuable in the confusion that had been created during the fateful first week. An annexure to the White Paper nevertheless admits the seizure of Rs. 30 lakhs as well as several kilograms of gold and silver. The truth remains elusive, thanks to the blanket ban on any independent investigation.

What can one say about the gaping bullet marks on the golden dome of the main Harimandar Sahib especially those on the northern side? Visible as the marks are, Government could not have undertaken repairs without incurring embarrassment and further delay. Quite appropriately the *hazoori ragis* Bhai Surinder Singh and his companions were singing *jaisa koi karoi taisa koi paloai karhole* which means the tyranny and falsehood (practised by the rulers) shall stand exposed in the Court of God.

The *parikarma* may have to be extensively if not completely relaid. I was awe-stricken by the sight of the mass of rock and rubble piled up along the entire eastern wing. The two *bungas* stand forelorn, blasted out of recognition by gunfire from Army tanks. The sunken marble slabs of the *parikarma* have too many gaps for the flooring to be firm and smooth. It is hardly surprising that this is so because

more than a dozen Centurion tanks had been ordered into the Golden Temple complex by the Generals who had gone in with "prayers on their lips"!

The overall impression left on my mind was one of anguished astonishment at the enormity of the Army action and the barbarity of the destructive force used against this House of God. I witnessed endless lines of tearful pilgrims unable to comprehend why Government resorted to this unparalleled sacrilege.

As the Sikhs stand today on the crossroads of history, it appears to me that only a top level conclave of architects, archaeologists, historians and religious leaders can deliberate upon and conceptualize how the entire complex should be designed and reconstructed so as to resurrect the pristine glory and spirit of the Golden Temple, for I am convinced after my visit last that the repairs of Akal Takht as carried out by the Government simply add insult to the injury.

Appendix - 11

Kar Sewa and the Gurdwaras Act

KAR SEVA In Light of Sikh Gurdwaras Act of 1925

A controversy over the Kar Seva, repair, construction and maintenance of holy buildings/shrines in the Golden Temple Complex is the burning topic of these days in newspapers and especially amongst the Sikhs. Giani Mohinder Singh, Secretary Shiromani G.P. Committee (Rtd.), now General Secretary, Sri Guru Singh Sabha (Regd.), Amritsar (Established 30th July, 1873) has given his views in light of the Sikh Gurdwaras Act, of 1925, as under:

That the management of historical gurdwaras in Punjab, Haryana, Himachal and Chandigarh is being run under the auspices of the Shiromani Gurdwara Parbandhak Committee, SGPC, in accordance with the Sikh Gurdwaras Act of 1925. According to Section 85 (1) of the Amended Sikh Gurdwaras Act 11, Gurdwaras are directly under the control of SGPC.

Gianiji further said that the Sikh Gurdwara Tribunal Lahore, whose president was Sardar Man Singh, framed the Management Scheme in 1936 for the management of the Sikh gurdwaras under Section 85 to control the Gurdwara property, *jagirs*, funds and general administration etc. This Management Scheme remained in force till 6th February, 1945 during the regime of local gurdwara committees. In 1944, Giani Kartar Singh suggested an amendment to dissolve the local gurdwara committees under Section 85 and as such, the Act was amended by the then Punjab Govt. Thereby handing over the control of the Gurdwaras under Section 85 direct to the SGPC, but the Management Scheme remained in force after making due amendments.

Since the Management Scheme was introduced, approved and implemented as per Section 85 (2), this Scheme has "Force of Law" in terms of the Sikh Gurdwaras Act; which by its Rule 4, sub-Rule 1 and Rule 56(A), clear all doubts that no addition or alteration can be made without the sanction of the SGPC and in sub-Rule B, it is also very clear that any repair, addition or alteration to the existing building of the gurdwaras cannot be made without having proper sanction of the executive committee of the SGPC.

Therefore, all the *kar sevas* of *sarovars* (holy tanks), *seva* of construction and repair of *gurdwara* buildings etc. have been carried out always after getting proper sanction of the SGPC. Any *kar seva*, repair or construction of holy buildings/shrines cannot be taken in hand without due permission or approval of the SGPC and stressed the need to continue the previous procedure already in practice since 1925.

Appendix - 12

Juristic View on 'Operation Blue Star'

— D.S. DHILLON (ADVOCATE)

There is a juridical aspect of Operation Blue Star, whether this operation can be sustained on legal grounds, if not, whether those who were interested in their place of worship, had the right to defend it against an attack.

The Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, came into force on 15th of October, 1983. Soon after the Government had surrounded the Golden Temple Complex by the para-military forces. Two to three months before the Operation Blue Star, sporadic exchange of fire between the para-military forces and inmates of the Complex had become a common feature. On the Central Government side it was perhaps decided to send the military inside Golden Temple Complex especially for the purpose of flushing out Sant Bhindranwale and his followers, who became apprehensive about the Government intention since they were regularly fed by their counter-intelligence in the Government. They, then started mending their fences, constructing *morchas*, fortification, the very nature of the weapons used by them would show that they knew beforehand, what type of weapons would be used by the Military. For example rocket launchers, anti-tank launchers, L.M.Gs. bombs and grenades were not meant for individual killings. They were relevant only if heavy armour like tanks, A.P.C. were used by the other side. This was the situation when Operation Blue Star was started on 3 June '84.

Obviously Government justifies operation under the provisions of the *Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983*. Provisions of this Act, if examined threadbare, may expose the Government for its false claims. The Armed forces in Punjab were called by the Governor in aid of the Civil Administration and the Armed Forces had planned their attack under section 3 of the *Armed*

Forces (Punjab and Chandigarh) Special Powers Act, 1983, hereinafter called the Act. Section 4 of the Act describes the special powers of Armed Forces. Under this section any commissioned officer, warrant officer, non-commissioned officer or any other person equivalent rank in the Armed forces may in a disturbed area:

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.

(b) if he is of opinion that it is necessary so to do, destroy any arms, dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence.

An *FIR* (First Information Report) was later lodged at Amritsar against several persons including those who died in the operation for sedition and waging war against the country and many other penal sections. All that is known about the dead amongst the combatants (Sant Bhindranwale's followers) except four persons namely Sant Jarnail Singh Bhindranwale, Gen. Subegh Singh, Bhai Amrik Singh and Thara Singh, others about 170 were unidentified terrorists (as mentioned in their post mortem reports). So Government have not been able to show if any proclaimed offender or a person wanted in some criminal case were inside the Golden Temple Complex on 3.6.1984.

Seen in this light, it cannot be said that those who were inside, were acting in contravention of any law or order for the time being in force in the disturbed area prohibiting assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances. Whether the fortifications, *morchas*, weapons and arms being kept by the Sant and his followers, can be covered under the above quoted sub-section (2), shall have to be seen in the light of other provisions in the Indian Penal Code. Section 442 IPC describes house-trespass:

"442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel, used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, is said to commit house trespass."

Section 97, 98 and 100 IPC in the nature of exceptions give a person right to defend his body and property or body and property of any other person. Use of force, according to law, in these sections shall be in proportion to the violence being caused to the body or the property. Such a defence of the body and property besides the licit weapons, can even be by illicit weapons, according to the law as laid down in these sections.

Obviously, therefore, the criteria as laid down in clause (a) of section 4 of the Act, is missing. The law as contained in the exceptions quoted above shall come into play. No less than Director General of Punjab Police had observed that there was no criminal inside the Golden Temple Complex. Even Mr. Rajiv Gandhi, only a few days before the Operation Blue Star, had given a clear chit to Sant Bhindranwale, giving him a good character certificate of a religious man.

The Government has not been able to establish any nexus between the offences committed elsewhere in Punjab, and Sant and his followers inside the Golden Temple Complex. At least, all the murders, dacoities and other offences have been investigated and fully traced and till now none of the inmates of the Complex has been linked with any of these crimes.

Let us examine the ingredients of these clauses one by one. Acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons has not been established. Congregations inside the places of worship certainly do not fall with the prohibition of assembly of five or more persons. Carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosives substance, obviously means carrying weapon from one place to another. Inescapable conclusion therefore, would be that the inmates of the Complex had the right to defend it against the attack by the Armed forces with licit or illicit weapons.

Even if the case is examined in the light of clause above, it is doubtful if any of the criteria in that clause could be available to the Government on 3.6.1984.

As I have said above, the military forces were out to commit a trespass, therefore, criteria too was not available to them. No attacks were being carried out from the complex upon any body or atleast no case as mentioned above was registered against any inmate. We can safely presume that there was no arms dumps prepared or fortified or shelter for making attacks or a training camp for armed volunteers or used as a hideout by armed gangs, absconders wanted for any offence.

The last criteria wanted for any offence is important. The Government had not any material with them on 3.6.1984 to show that any inmate was wanted for any offence. It can, therefore, be said that apart from political or other reasons, there were no military reasons for the attack of the Armed Forces on the Golden Temple Complex on 3.6.1984.

What followed the Operation Blue Star is worse. Hundreds of innocent persons have been roped in. They have been subjected to torture, experienced only during the war days. They have been interrogated like the prisoners of war, and are languishing in the military custody even still. Some of those, who have been released are physical wrecks and many had been killed without trial. Even now false encounters are carried out daily by the Punjab Police, Armed forces justify the military custody of such persons under section 6 of the *Act*, which runs as under:

“Section 6: Arrested person and seized property to be made over to the police; any person arrested and taken into custody under this Act and every property, arm, ammunition or explosive substance or any vehicle or vessel seized under this Act, be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances, occasioning the arrest, or, as the case may be, occasioning the seizure of such property, arm, ammunition or explosive substance or any vehicle or vessel, as the case may be.”

This section nowhere envisages a custody in the hands of Armed Forces, rather on the opposite it says that any person arrested shall be made over to the officer-in-charge of the nearest police station “with the least possible delay” together with a report of the circumstances. Almost in every case giving reports on the bail applications the police have pleaded that the accused are in the Military custody. They interpret this section as having a right for the custody of the accused for unlimited period. “With the least possible

delay" cannot by any stretch of law be interpreted as an unlimited period. This coincides with sub-section (1) and (2) of Article 22 of the Constitution and means that the Armed forces cannot retain the custody of the arrested persons for more than a period that is required for handing him over to the police.

Hundreds of persons have been arrested and interrogated and 90% of them have been found innocent but still they are not being discharged. Many of them are still in the judicial lock up. Punjab had experienced the blanket means of the provisions of section 107/151 Cr.P.C. Many persons are roped in under these provisions and are subjected to heavy sureties which even if given are sent to Revenue Officers for verifications which take more than a fortnight to complete. Provisions of remand are being mis-used in most of the cases. People are kept in the police or military custody for full 30 days in some cases, even though there are no reason for the same. Executive Courts created under the *Punjab Criminal Procedure Act 1983* are found only too obliging in this regard. The travesty truth and justice goes on unabashed.

Appendix - 13

Charge Sheet Against Prisoners of Operation Blue Star

CHARGE SHEET

P.S. SIO. III/SIC/ CAI/SPE New Delhi	Distt. New Delhi.	Charge Sheet No.	Date
Name, Address and occupation of complainant or informant.	Commander, 350 Inf. Rde. C/o 56 A.P.O.	P.I.R. No. C.N. 2/84 SID	Date 14.6.84
1	2	3	4
Name and addresses of accused persons sent up for trial. In Custody On Bail or recognizance.	Names and addresses of accused persons not sent up for trial whether arrested or not arrested, including absconders (show absconders in red ink.)	Property (including weapons found with particulars) of where, when and by whom found and whether forwarded to Magistrate	Name and addresses of Witnesses Charge or information, names of offence and circumstances connected with it, in concise details, and under what section of law charged. U/s 121 IPS, 25 & 27 ARMS Act. 1959

Contd.

1	2	3	4	5
Per list annexure-A, (enclosed)	As per list annexure-B (enclosed)	Lists enclosed.	List enclosed.	Brief facts at the case are that com- munal and extremist movement in Punjab had gripped the State in a holocaust of horror
Harminder Singh Sandhu, S/o Dal Singh r/o 45, Court Road, SPS Civil Lines, Amritsar and others.	Malkiat Singh S/o Sucha Singh, Vill. Nagoke, Teh. Taran Taran, PS Verowal, Amritsar and 34 others.			
				↓ Contd.

and violence and fanatics and militant Sect of Sikhs had let loose a reign of terror committing heinous crimes against innocent and helpless people and public servants. These groups of people were led by Sant Jarnail Singh Bhindranwale who was head of a religious fanatic and militant Sikh jatha called Jatha Bhindranwale and by Bhai Amrik Singh, President, All India Sikh Students Federation. They were joined by other groups like Dal Khalsa, Akhand Kirtani Jatha etc. the members of these groups, particularly Sant Jarnail Singh Bhindrawale had been exhorting Sikh masses to collect arms, vehicles and to form Suicidal squads with the objective they escalated violence and thereby created conditions of insecurity, anarchy and disorder, seriously threatening country's unity and territorial integrity. These groups of people were aided and abetted by a number of Sikhs and others in foreign countries with money, arms etc., which were made available and/or assured to be made available to the aforesaid groups of persons for accomplishing the objective aforesaid. In the course of investigation it came to light that aforesaid groups had lodged themselves in the Golden Temple Complex Amritsar which included various guest houses like Guru Nanak Niwas, Guru Ram Das Sarai, Akal Rest House etc., and their leaders including Sant Jarnail Singh Bhindranwale and armed themselves in the Akal Takht, the heart of the Golden Temple Complex.

2. The aforesaid precincts of the Golden Temple Complex, Amritsar were converted into an arsenal for stock-piling of arms, ammunitions and explosives and a refuge for members of banned organisations viz. AISSF, Dal Khalsa and other terrorists led by Sant Jarnail Singh

Bhindranwale, Bhai Amrik Singh, Thara Singh, Harminder Singh Sandhu, Kuldeep Singh Kohla, Ex-Major General Subeg Singh and others. These groups of people and their followers had built up fortifications at various places in and around Golden Temple Complex, Amritsar and at adjoining buildings owned by private persons under duress and threat and had stationed their men with arms, ammunitions and explosives at strategic points for full scale insurgency with the intention of establishing, by armed insurgency, a State independent of Government of India to be called 'Khalistan' and with that view had made elaborate preparations to wage war against the Govt. of India.

3. In view of the above and others deteriorating conditions of law and order situation in the State of Punjab and to meet with the challenge of such full scale insurgency in and around Golden Temple Complex, Amritsar, the Govt. of Punjab requested General Officer Commanding-in-Chief, Western Command to act in aid of Civil Administration under the provisions of Armed Forces (Punjab & Chandigarh) Special Powers Act, 1983. In pursuance thereof the General Officer Commanding 9 Inf. Div. reconnitted the area in and around Golden Temple Complex, for waging war against the govt. of India but also were determined for armed insurgency. He deputed Commander of 350 Inf. Brigade to clear the Golden Temple Complex on 4.6.84 of such terrorists and to seize illegal arms, ammunitions and explosives collected therein.

4. The Brigade Commander had made his own recess on 4th June, 1984 and noticed amongst other following strategical deployment by the terrorists:

- (a) The main entrance in the North had been fully fortified from its East end to West end.
- (b) All the opening in the arches and the main entrance were sealed with bricks and only loopholes were left. The entire length of roof was plugged with brick wall.
- (c) Bunkers were constructed at a number of places.
- (d) Streets leading to the temple were effectively covered and the movement across them invited fire from these positions.
- (e) Hotel Temple View, Brahm Boota Akhara, Sindhi Hotel and other dominating buildings in front of the main entrance were fortified. Fire was being brought down from these positions.
- (f) On the Western side, the *parikarma* dominating Akal Takhat

area and all the dominating buildings to the East of Akal Takht were fortified. The length of Western *parikarma* was also fortified.

- (g) On the such, temple wall and the openings in arches were sealed with bricks wall. Bunkers were constructed on the top of the rooms.
- (h) The dominating buildings such of portion of *parikarma* were occupied and dominated all the lanes leading into the Temple.
- (i) On the east side, Baba Atal Gurdwara was fortified.
- (j) The buildings of Guru Nanak Niwas, SGPC, Guru Ram Das Langer, tower and roof tops of Dera Kharak Singh were fortified with bunkers. The water tank on the East of Guru Ram Das Sarai was fortified and occupied. Construction work was still going on acme of the bunkers in the entire complex. All this was done and being done in a manner that the terrorists could bring down effective fire on the Security Forces approaching the Golden Temple Complex from any direction.

5. Consequently the Brigade Commander had deployed following units of the Army besides para-military forces comprising of BSF and CRPF, which had, hitherto been placed under his command, in order to launch an operation called "Operation Blue Star" to accomplish the task assigned to him:

- (i) 9 Kumaon
- (ii) 12 Bihar
- (iii) 26 Madras
- (iv) 9 Garhwal rifle
- (v) 10 Guards
- (vi) 15 Kamaon
- (vii) S.I.F.
- (viii) I Para Coy.
- (ix) I Sgn. 16 Cav.
- (x) 1 Coy. 5 reach.
- (xi) Element of 60 Engr. Regt.

6. The whole city of Amritsar was under curfew by the order of District Magistrate, Amritsar, U/S. 144 Cr.P.C. and the Brigade

Commander in view of the aforesaid situation deployed 12 Bihar Unit of the Army assisted by BSF and CRPF Units to form a cordon around Golden Temple Complex and other fortified position on 4.6.84. The inner cordon formed by 12 Bihar Unit and other Para-Military Forces became effective on 5th June, 1984 and the check posts in the cordon were fired from the positions occupied by terrorists in and around Golden Temple Complex.

7. On 5th June, 1984 the terrorists and others entrenched in and around Golden Temple Complex were asked at 16.30 hrs. and onwards to come out and surrender by 17.30 hrs. by making announcements over public address system. The announcement was made in Punjabi from three different places and within the hearing distance of persons inside and around Golden Temple Complex. The announcement was met by shouts of pro-Khalistan Slogans like, 'Khalistan Zindabad', 'Lad ke lawange Khalistan' and intermittent bursts of fire. However, in compliance of aforesaid announcement 119 men, women and children surrendered at P.S. Kotwali by 17.15 hrs.

8. The Surrender time was later extended to 19.15 hrs. with repeated announcements on public address system as before. But each time it was met with aforesaid slogans and bursts of fire. These bursts of fire by the terrorists during the announcements were not replied by Military and Para-Military forces and none of the persons surrendered during the aforesaid extended period. The firing initiated by the terrorists continued and other units were thereafter commanded to move forward at 22.00 hrs. on 5.6.84 for accomplishing the task assigned to them as detailed below.

9. Kamaon was detailed for flushing out terrorists from Guru Ram Das Sarai and SGPC building by 0100 hrs. on 6th June, 1984, to carry out mopping up operation upto 0400 hours on 6th June, 1984 and to secure remaining portion of the area by 0800 hrs. on 6th June, 1984, to capture Sant Harchand Singh Longowal and other prominent Akali leaders and seize illicit arms.

10. 26 Madras was assigned the task of entering Golden Temple Complex from the Eastern Gate, clear the area towards the southern Gate *parikarma* and the rooms upto Atta Mandi Gate. It was then to clear the rooms alongwith southern *parikarma* upto western *parikarma*. They were also directed to seize illicit arms and ammunitions and apprehend terrorist inside the area of their operation.

11. 9 Garhwal was directed:

- (a) To launch a diversionary attack from the south of the Golden Temple complex, from Shahidanwala Gate, if necessary.

- (b) To gain a foothold near the gate and capture the top floor of the library.
- (c) To capture weapons, ammunitions and other war-like material from their area of operation.
- (d) To apprehend terrorists inside the Golden Temple Complex.

12. 10 Guards was assigned the task of capturing the weapons and ammunitions and other war-like materials from the northern wing of the Golden Temple Complex, to apprehend the terrorists located in the area, to clear and capture northern wing but not later than 0100 hrs. to complete mopping up in the same area by 0400 hrs. on 06 June, 1984.

13. 15 Kumaon was kept in reserve for being deployed in case of operational requirements in any particular area, if necessary.

14. I para Coy. was directed to capture northern half of western *parikarma*, in case of confrontation.

15. S.F.P. was directed to capture arms & ammunitions from Akal Takht and to assist in flushing out and apprehension of terrorists.

16. 16 CAV and 5 Mech. were kept in readiness, to provide support, if and when necessary.

17. 12 Bihar was ordered.

- (a) To establish inner cordon around the Golden Temple Complex and to ensure that no terrorist escapes from the Golden Temple Complex or enter the Golden Temple from outside.
- (b) To provide covering fire for preliminary operations for clearing Temple View Hotel and Brahm Boota Akahara in case of necessity.
- (c) To provide covering fire for main operation for clearing the Golden Temple Complex.
- (d) To search and secure area between inner cordon and the temple complex and capture arms and ammunitions and apprehend terrorists.

18. The battalion of 9 Kumaon tried to enter Guru Ram Das Sarai from the east through the rear Gate at 2230 hrs on 5.6.84. As they approached and as they entered the building they were fired upon from Akal Rest House and the first and the second floors of Guru Ram Das Sarai. They were subjected to small automatic fire from the ladies bath room located in the open quadrangle of the

building. The terrorists fired small arms through the holes in the doors and windows of the rooms. Upto midnight of 6th June, 1984, there was several close quarter fightings and only 3 floors of Ram Das Sarai could be partially secured, but not fully cleared. A large number of people including men and women, all innocent pilgrims staying in Guru Ram Das Sarai sought protection of 9 Kumaon. Even on these persons, terrorists threw hand grenades from the roof of Guru Ram Das Sarai and caused heavy casualties not only on surrendered pilgrims, but also on the troops. Kumaon recovered huge arms from its area of operation and prepared a list of the same. The operation of 9 Kumaon continued and on 8-6-84 the unit captured 16 terrorists from one of the huge basements of Guru Ram Das Sarai who threw down their arms on seeing the troops of 9 Kumaon. The Kumaon handed over these 16 terrorists to the Officer Commanding Provost for sending them to detention camp established by 237 field regiment and he handed over these terrorists to OCC Mo No.2. 9 Kumaon captured one more terrorist on 9th June '84 who was similarly handed over to OC provost 9 Inf. Div. and who in his turn handed over him to CC Camp No. 1. During the operation, 9 Kumaon suffered casualties of 9 killed and 24 wounded. The Unit also recovered documents, letters, currency notes and passport as of Khalistan from the SGPC building and Guru Nanak Niwas. These were sent by 9 Kumaon to Hqrs. of 9 Inf. Div. located at Amritsar.

19. The area of operation of 12 Bihar whose main assignment was to establish inner cordon around the Golden Temple Complex, to ensure that terrorists did not escape, were fired upon intermittently on 5-6-84 mainly from the Langer Complex and adjacent toward as well as Ghanta Ghar Area. On 8.6.84, 12 Bihar were fired upon by 12 extremists who sought to escape from the Golden Temple Complex through the exit near the Akal Takht. They were captured and handed over to OC Provost who handed them over to OC Prison Camp No. 2. The troops of 12 Bihar suffered casualties of 1 dead and 4 injured.

20. 26 Madras entered the Golden Temple Complex from the Eastern Gate and moved towards the southern *parikarma* right upto Atta Mandi Gate and upto the Akal Takht. In the process the officers and Jawans of the 26 Madras drew effective and heavy fire from Sindhi Hotel, Langer Sahib and other buildings which were all fortified with heavily armed extremists, though suffering casualties, the Unit moved on and ultimately established a firm base on the southern *parikarma* of the Eastern Gate. After clearing the area of the terrorists who were using light Machine Guns, Automatic Rifles and were also

throwing hand grenades. After eliminating the opposition, 26 Madras, linked up with 9 Garhwal under the Shahidan Wala Gate and had to launch operation at Akal Takht. They drew heavy volume of fire from Harmandir Sahib. But as per instructions, did not return the fire towards Harmandir Sahib. In their presence 15 Kumaon who had been ahead of them and moving towards the Akal Takht suffered heavy casualties and were repulsed back. The 26 Madras then had to launch a heavy attack on the Akal Takht, but suffered heavy casualties, in the process. Brave JCO jumped into the Akal Takht, but, was captured by the terrorist and blown up with explosives. This unit of 26 Madras besieged terrorists who ultimately surrendered after pitched battle. They numbered 83. These terrorists were collected together and handed over to OC Provost of the 9 Inf. Div. who in his turn, handed them over to OC Jump Camp No. 1 on 6.6.84. 26 Madras continued their operation against remaining terrorists and ultimately caught on 10.6.84, one terrorist, who was handed over to OC Provost 9 Inf. Div. who in turn handed him over to OC Camp No.1. On 10.6.84 the troops of 26 Madras suffered casualties of 15 killed and 51 wounded.

21. The 26 Madras also discovered an arms factory atop the eastern gate for manufacturing grenades of three varieties and countrymade pistols and carbines. It was this unit which recovered the body of Sant Jarnail Singh Bhindranwale as well as the bodies of Bhai Amrik Singh, Thara Singh and dismissed Major General Subeg Singh from the Akal Takht.

22. 15 Kumaon Regiment had attempted to clear the Akal Takht. This unit moved after 0245 hrs. of 6.6.84 towards the Akal Takht. After covering some distance in the covered portion towards the Akal Takht it met with heavy fire of automatic weapons, grenades and rifles which was coming from the windows in the covered portion, roof tops and other fortification constructed all around inside the complex. While the troops were nearing the Akal Takht, they were fired upon from roof tops by an anti-tank weapon. The volume of fire was so heavy, and the resistance by the terrorists so fearful that 15 Kumaon suffered casualties to the extent of 7 killed and 25 wounded in a brief period upto 0615 hrs. It ultimately pulled back, repulsed by the terrorists from the Akal Takht.

23. The 9 Garhwal moved into their area of operation in the Golden Temple Complex at about 2145 hrs. They were fired upon from the library building and rooms of both sides of that building. They faced fierce fighting from the terrorists and ultimately forced entry into the Golden Temple Complex by blasting the southern

Gate. These troops entered the *parikarma* and cleared rooms along both sides of it. After consolidating their position, in the Deori and the Library area, the OC 9 Garhwal Rifles, made announcement from Shahidanwala Gate on Public Address equipment, for those inside the temple to surrender. Finding themselves besieged, the terrorists had to come out throwing their arms from various areas. About 20-25 terrorists were captured from Harimander Sahib, about 35-40 terrorists from the Darshani Deori and the rest of the terrorists from other parts of the *parikarma*, in all, they were 183 terrorists who has been captured after they threw their arms. They were all gathered in the area Shahidanwala Gate and were then handed over to OC Provost of the 9 Inf. Div. He, in turn, handed over 152 of them on 6.6.84, to OC Camp No. 2 and 31 on 6.6.84 to OC Camp No.1. The troops of 9 Garhwal suffered casualties of 6 dead and 40 wounded.

24. The 10 Guards who were under instruction to clear and capture northern wing of the Golden Temple Complex and apprehend terrorists located in that area divided the northern wing into two halves, left half and right half and divided themselves into 4 columns. Column No. 1 and 3 moved into the left half and column No. 2 & 4 into the right. It was noticed by 10 Guards that terrorists had intensively fortified the northern wing. Large number of bunkers were constructed on the top floor of the northern wing with the help of sand bags and bricks. The terrorists had also made a large number of loopholes in the existing walls. As soon as the troops moved, they faced heavy volleys of fire from small arms, automatic fire arms, single shot as well as hand grenades, though the mechanized forces brought down suppressive fire. As soon as the troops started moving down the steps, they were fired upon by the terrorists from the ventilators of the basement, which dominated the stairs and many of the Jawans were injured below knee level. As the troops of the 10 Guards moved further, their progress was slowed down due to heavy casualties and effective fire being brought down upon them by the terrorists from all directions. As a result, 10 Guards suffered casualties of 19 killed and 53 wounded. During the operation, 50 terrorists were apprehended and these included 2 women. The captured terrorists were kept segregated till they were handed over to OC Provost on 7.6.84 who in turn handed them over to Camp No. 1 established by 237 field regiment at Amritsar on 7.6.84.

25. The Border Security Force, who had been moved for duty in the inner cordon around the Golden Temple Complex from 11.4.84, was deployed in Kathian Bazar Area behind the Akal Takht of the

Golden Temple Complex. On 6.6.84 fire engulfed the area of Paperwali Mandi and Shaheed Market and the fire brigade was called to control the fire. Taking advantage of the confusion created due to the fire and fire-fighting operation, terrorists in good numbers came out from the Akal Takht and jumped in the area behind it through house tops of building immediately behind Akal Takht. These terrorists were seen throwing their arms in the Akal Takht building before running away. In all, 38 terrorists escaped from Akal Takht slope after having thrown their arms. These terrorists were ultimately brought to camp No. 1 on 7.6.84.

26. 10 Dogra was inducted into the Golden Temple Complex on 8.6.84 with instructions to occupy Langer Sahib, and Manji Sahib at Golden Temple Complex, Amritsar. At about 1100 hrs. on 8.6.84 when the area of basement of Dera Baba Khari Singh was being searched, 10 Dogra troops encountered terrorists who fired with their weapons from inside, injuring one Jawan. While this action was going on, the RMO of the Unit Capt. S.S. Rampal who was attending to casualties was fired upon with automatic weapons by the extremists from one of the rooms killing two other ranks and wounding two including the RMO. The RMO was pulled inside and all efforts to rescue him including persuasion failed and he was brutally killed only on 9th June, 1984, the bodies of Capt. S.S. Rampal and one other rank were recovered. It was on the morning of 10.6.84 while troops of 10 Dogras were carrying out search of the house close to Manji Sahib building, 3 terrorists were captured. One LMG and other weapons were recovered from the rooms of the same house from where 3 terrorists had been apprehended. They were handed over to OC Provost Unit 9 Inf. and were lodged in camp No. 2 of 237 Field Regt. Amritsar on 10.6.84.

27. During the operation and afterwards the Golden Temple Complex and the surrounding areas were searched for arms, ammunitions and explosives. Large quantities of sophisticated weapons including 41 Nos. 7.62 mm LMGs, 92 Nos. 7.62 mm SGRE, 446 Nos. Rifles, 64 Nos. Carbines, 10 Nos. Sten Guns, 2 anti-tank weapons, 51 Nos. Chinese Assault Rifles, 157 Nos. revolvers and pistols, 83 Nos. 12 bore single and double barrel guns, unlimited quantity of ammunitions and explosives were recovered. Factories for the indigenous manufacture of arms and hand-grenades were also found atop Langer Deori and on the first floor of the Langer Kitchen. These factories were well equipped for the purpose and articles found therein were seized. All the arms, ammunitions and explosives recovered from Golden Temple Complex were kept with 10 Dogra

for safe custody. All the arms and ammunitions etc. were examined by the Board of Officers and number of them were found of foreign origin including 12 assault rifles (7.62mm) of Chinese origin in factory packed conditions. It has also been opined by the army experts that almost all the arms recovered from Golden Temple Complex were extensively fired. Investigation has revealed that all the arms recovered from the Golden Temple Complex had been illegally acquired by the terrorists and stored in the complex which were later used by them against the security forces between 5th June, 1984 to 10th June, 1984.

28. In the course of aforesaid operation, large number of documents including Alan Nama of Khalistan, Khalistan currency notes, Khalistan Passport, Khalistan Postal Stamps, tapes and other incriminating documents/articles were recovered from the Golden Temple Complex. The Alan Nama of Khalistan issued in 1980 declared the boundaries and policies of Govt. of So-called Khalistan. In the tape-recorded speeches of late Sant Jarnail Singh Bhindranwale speaks about the establishment of Khalistan and exhorts every Sikh to keep himself armed and well equipped to wage war against the Govt. of India for the achievement of the objectives of establishment of Khalistan. The objective of the extremists is further indicated from the documents/articles recovered from the Golden Temple Complex like Khalistan Currency Notes, Khalistan Passport issued to accused Gopal Singh Shaheed, Khalistan Postal Stamps of the so-called govt. of Khalistan.

29. On the completion of operation in Golden Temple Complex, Amritsar, Commander of 350 Brigade addressed a complaint to Sr. Supdt. of Police, Amritsar, on the basis of which FIR No. 182 dated 10.6.84 was registered at Police Station Kotwali, Amritsar. Subsequently, on the request of the Punjab Govt., the investigation was taken up by special Police establishment, C.B.I. under the orders of Central Government *vide* notification No.229/17/B4-AVD.II(II), dated 14.6.84 and the present case was registered in SIO-II Branch of SPE/CBI.

30. Investigation has revealed that out of the persons apprehended by various army and para-military units, a total of 382 persons actually waged war against the Government of India in armed confrontation with Military/Para-Military forces, during the period from 5th June, 1984 to 10th June, 1984. 3 persons namely Gurdev Singh S/o Zora Singh, Lakhwinder Singh S/o Gurbachan Singh and Rachhpal Singh S/o Amar Singh have since died. In the course of operation, the security forces suffered casualties of 83 including 4 officers killed and 252 including 14 officers wounded. There were casualties on the side of the terrorists as well.

31. From the facts and circumstances narrated above, a *prima facie* case against 379 (three hundred and seventy nine) accused persons listed in Annexure A punishable u/s 121 IPC, 25 and 27 Arms Act 1959 is made out. Of 379 accused persons 91 accused were arrested and are in Judicial custody at Central Jail, Amritsar/Gurdaspur. 268 accused persons are detained under N.S.A. and are lodged in Ajmer, Jodhpur and Nabha Jails as have been mentioned against each accused person in Annexure-A. 20 accused persons could not be arrested during the course of investigation. It is prayed that the accused persons may be summoned through legal process to face the trial in accordance with the law. The sanctions as required u/s 196 Cr.P.C. and sanction 39 of Arms Act 1959 for the prosecution of the aforesaid accused persons have been obtained from the competent authorities and the same are filed alongwith this charge sheet.

32. Whereas accused persons mentioned under column 2 and listed in Annexure-B enclosed with the chargesheet are not being sent up for trial for want of sufficient evidence in as much as they were not found actually confronting the security forces but were apprehended in their bid to come out of the Golden Temple Complex during army operation. These persons were arrested and are in judicial custody. All these accused persons except serial No. 33 and 34 are lodged at Central Jail, Amritsar. Serial No. 33 and 34 are lodged at Central Jail, Gurdaspur. It is, therefore, prayed that these 35 accused persons be discharged in this case.

SUPERINTENDENT OF POLICE
CENTRAL BUREAU OF INVESTIGATION, DPE
SPECIAL INVESTIGATION CELL, NEW DELHI

Appendix - 14

British Operation 'Golden Temple'

Clash In The Darbar Sahib

— JOHN LAWRENCE

One of the great debates raging over the Punjab issue these days is the question of police entering the Golden Temple to flush out alleged extremists. To devout Sikhs, the implication is far more complex than the mere violation of sanctuary. Such a police action could involve acts of disrespect in the Darbar Sahib itself — deeds that would be considered anathema by the majority of the Sikh community.

Over 100 years ago, the East India Company made just such an error by sending shoe-clad soldiers into the very precincts of the Akal Takht. The affair cost a company *subedar* his life. The astute Resident of Lahore, the famous John Lawrence, noted in his correspondence detailing the incident to the Governor-General and justifying the punishment handed out, that the general Sikh population had respected the Akalis stand.....

According to the Introductory Note in the *Gurdwara Gazette* for August 1967, pp.124-25, to *Some Documents About Sikh History* (1848) by Sardar Nahar Singh, M.A., the clash referred to in the correspondence given below took place between soldiers of the East India Company and some *nihangs* (Akalis) when the former entered the precincts of the Darbar Sahib (Golden Temple), Amritsar, with shoes on. A *subedar* of the Company's army was killed; and the Commandant of the Corps and some men were wounded. As a result thereof, Ganga Singh, the leader of the Akalis, and two of his associates,

were hanged and six of them were sentenced to seven years' imprisonment with labour and irons. – (Ed.).

From John Lawrence, Esquire, Secretary to the Government of India, Foreign Department, Fort William.

Lahore, 19th February, 1848

Sir,

In paragraph 7 of my letter No. 18 dated first ultimo, I had the honour to report for the information of the Right Honorable the Governor General in Council, that an Akali, with some followers, had taken position in one of the buildings – Akal Bunga or Akal Takht – adjoining the Temple at Amritsar; and in resisting the troops who were endeavouring to capture them, had killed a *subedar* and wounded an officer and several men. Before despatching my letter, I had the satisfaction of adding that these Akalees had surrendered to the party despatched from Lahore against them. The culprits were brought to Lahore against them.

The culprits were brought to Lahore and the case investigated before the Darbar. Ganda Singh, the leader of the party, and his associates, all "Akalees" were arraigned for the murder of the *subedar* and wounding the Commandant of the Corps and some of his men, with intent to kill, the guilt of the prisoners being fully proven, and there being no extenuating pleading in defence, the leader, Ganda Singh, and two of his associates, were sentenced to be hanged; and the remaining six prisoners to confinement with labour and irons for seven years.

These sentences I confirmed on the 14th instant; and accordingly this morning, the three Akalees, sentenced to death, were hanged. As this was the first instance in which Akalees have been sentenced to death, I requested the Brigadier Commanding at Lahore to have the 18th Regiment of Native Infantry whose parade ground is within 100 yards of the spot where executions take place, drawn up as a precautionary measure. The ground was guarded by the Seikh Troops, and the sentence of the law was carried out under the directions of Mr. Cocks, Lieutenant Pollock and Sardar Khan Singh, Udalttee of Lahore.

I consider that the execution of these Akalees will have a most beneficial effect on this turbulent race, and thoroughly convince them that the days have gone by when they could murder with impunity. Ganda Singh Akali was a man of some note; he had been engaged, at different times, in various desperate affairs and was at feud with

Sardar Lehna Singh Majitha, the late Governor of the Manjha country, whose property, on the occasion, he plundered.

Babeg Singh, Khurg Singh, Mustan Singh, Heera Singh, Hookum Singh, Gowhar Singh:

As these Akalees are looked up to with respect and even reverence by the Sikh population of the Punjab, it is not improbable that the six prisoners, noted above, who have been sentenced to seven years' imprisonment may hereafter make their escape with the connivance of their guards, I, therefore, beg to recommend that the Right Honorable, the Governor General-in-Council may be pleased to direct the issue of a warrant, allowing them to be confined, or the period for which they have been sentenced, in one of the jails in the Regulation Provinces. The exile of such desperate characters will, I am satisfied, have a most beneficial effect.

I have the honour to be, Sir,

Your most obedt. Servant,

Sd/- John Lawrance

Officiating Resident

Lahore Residency,
19th February, 1848.

* * *

No. 570 Fort William, Foreign Department,

10th March, 1848.

To Officiating Resident, Lahore.

Sir,

I have the honour to acknowledge the receipt of your letter dated the 19th ultimo, No. 33, reporting the proceedings of the Durbar against Ganda Singh and other Akalees, who had killed a *subadar* and wounded an officer and several men.

Babeg Singh, Kharg Singh, Mustan Singh, Heera Singh, Hookam Singh, Gowhar Singh:

2. With reference to the 5th para, of your letter, the G.G.-in-C. is pleased to direct that the prisoners noted above, who have been sentenced by the Durbar to seven years' imprisonment, be confined in the jail at Bareilly to which place you are requested to forward them under proper guard. A warrant has been sent to the Magistrate of Bareilly, through the Secy. to Govt., N.W. Provinces, to carry the order into effect.

I have &c.,

sd/-

Fort William, Foreign Department,

10th March, 1848.

To Secy., N.W. Provinces

Para 5 of letter from Offg. Rest, dt. 19th Feb., 1948, No. 33 To-ditto in reply No. 570 10th March, 1848.

Sir,

I am directed to transmit to you the accompanying copy of a correspondence with the Offg. Rest. at Lahore regarding the confinement in the jail at Bareilly of certain prisoners sentenced by the Lahore Durbar to seven years imprisonment.

2. The necessary warrant for the confinement of the parties is herewith sent which you will be pleased to forward to the Magistrate at Bareilly.

I have &c.

Sd/-

Foreign Department

10th March 1848

* * *

To The Magistrate at Bareilly.

Whereas the Governor General-in-Council for good and sufficient reason has seen fit to determine that the persons named before shall be placed under personal restraint at Bareilly, you are hereby required and commanded, in pursuance of that determination, to receive these persons into your custody, and to deal with them in the conformity to orders of the Governor-General-in-Council and the provisions of Regulation III of 1848.

By order of the R.H. the Govn.-Genl.,
Ch. Secy. to the Govt. of India.

Appendix - 15

Sikh Religious Traditions in Indian Army

Certain countries in the Far East have made Military Training compulsory for their adult citizens, be they indigenous or foreign. Sikhs being in almost all countries in the world, an enquiry has been received as to the observance of Sikh customs and traditions in the Indian Army.

Extracts from a Sikh Regimental Centre Standing Orders are reproduced:

— *Editors: The Sikh Review*

Following religious customs are observed by a Sikh soldier enrolled in the Sikh Regiments: These customs are enforced through Regimental Standing Orders and Routine Orders. *Non-compliance of these orders then become an offence under the Army Act and is punishable under law.*

A Sikh soldier is prohibited by Regimental Orders from:

- (a) Smoking tobacco, (b) Trimming, pulling hair or in any way interfering or impeding with the growth of his beard, moustache or the hair on head, (c) Moving about with a *thathi* (cloth tied over the beard) outside his quarters.

Note:- The offences may also be dealt with by the Subedar Major and the Gurdwara Committee.

When in uniform or mufti, all Sikh soldiers are required to wear their beards rolled up neatly on beard strings except for religious ceremonies. Beard nets may be worn when permitted by Officer Commanding units.

Long *Kirpan* is worn only for religious ceremonies, however every Sikh in the Indian Army is permitted to carry on his person a *kirpan* measuring 22.86 cm (9 inches).

Apart from dealing with an individual under military law the Gurdwara Committee under Subedar Major also deals with offences against the religious laws. Normally the punishments awarded are:

- (a) To clean the shoes of the *sangat*.
- (b) To sweep the *gurdwara* building.
- (c) Fine to be utilized for *deg sewa* (*langar*).

Baptismal Ceremony "Amrit"

The baptismal ceremony is performed for each Sikh soldier in the initial stage of his basic military training. It is customary for a recruit to be initiated in 'Amrit' ceremony before becoming a trained soldier, so that he becomes a baptised Sikh.

Attestation

After completion of military training all Sikh recruits of the Army are attested by an oath at a colourful ceremony. The oath is taken by touching the *Guru Granth Sahib*, the National Flag and the Regimental Colour.

(*Note:* In practice *Panj Granthi* is taken around at an attestation parade and not *Guru Granth Sahib* – Editors).

Dress

The following distinctive items of dress are used by the Sikh soldiers:

- (a) *Pagris* – *Pagris* (Turbans) are issued at the same scale as hats, berets, side caps and steel helmets. The olive green *pagri* is worn instead of steel helmet or jungle hat. Its use is restricted to training exercise and operations.

Turbans are worn of a standard and neat pattern. It has six neat folds.

- (b) *Pag Sikh* – Two *pags* Sikh "fifty" are issued. Its colour is the same as the backing for the beret badge: 'yellow', red chocklate as prescribed by regimental order of a particular unit, a Sikh is serving in.

- (c) *Handkerchief* – While in sports kit, Sikh soldiers are permitted to tie a handkerchief over their hair knots instead of *pagri*.

- (d) *Drawers Cotton* – Two drawers cotton “*Sikhi Kachheras*” of traditional pattern are issued in lieu of the standard pattern.

The following allowances are granted to the Sikh soldiers in lieu of services/items:

- (a) In lieu of barber services, Sikh soldiers are granted Hair Cleaning and Washing Allowance.
- (b) In lieu of cigarettes, Sikh personnel are granted an allowance for sweets.

Operation Blue Star – The Human Rights Issue

A Samata Era Document

During the second World War the Axis powers, and especially Hitler's Germany, were responsible for many atrocities and so after the war in 1949 came into existence an extension to the Geneva Convention which sought to put further limitations on the actions of the belligerent parties. It prohibited:

1. (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrage upon personal dignity in particular humiliating and degrading treatment;
(d) the passing of sentence and the carrying out of execution without previous judgment pronounced by a regularly constituted court, offering all the judicial guarantees which are recognised as indispensable by civilised peoples.
2. The wounded and sick shall be collected and cared for. An impartial humanitarian body such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.

Finally we find:

Chapter-II, "Article 12. They shall be treated humanely and cared for by the party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons shall be strictly prohibited, in particular, they shall not be murdered or exterminated, subjected to torture or biological experiments; they shall not be wilfully left without medical assistance and care nor shall conditions exposing them to contagion or infection be created."

Article 17. "They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased properly maintained and marked so that they may always be found. For this purpose, they shall organise at the commencement of the hostilities an official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies whatever the site of the graves and possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the usage of home country."

The 1977 Protocols to the Geneva Conventions in Article 51 lay down further prohibitions on indiscriminate use of force. Among other things they say:

"2. The civilian population as such, as well as individual civilians shall not be the subject of attack. Act or threats of violence, the primary purpose of which is to spread terror among civilian population are prohibited."

"4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) those which are not directed at a military objective;
- (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) those which employ a method or means of combat the effects of which cannot be limited as required by the protocol; and consequently, in each case, are of a nature to strike military objectives and civilians or civilian objects without distinction."

5. Among others, the following types of attacks are to be considered as indiscriminate:

"(a) an attack by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objective located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(b) an attack which may be expected to cause incidental loss of civilian life injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

Through these and other provisions, belligerents in an international or civil war are protected against atrocities of various kinds and indiscriminate use of force by a superior power.

Apart from the machineries created under these conventions and protocols and the International Red Cross to keep a watch on whether the provisions of these conventions are respected, there is the mass media belonging to the various nations apart from those of belligerents which keep people informed about every detail of the war. Since the media represent the widest cross section of interest and opinion there is a fair chance that atrocities committed by any side would get wide publicity and the guilty parties would at least be universally condemned if not punished.

However, in a certain class of war everything may indeed be permissible. That is in a war waged by an autocratic authority against its own people. That has happened in the past under various forms of dictatorships where the whole people or a section of it or a minority is subjected to arson, violence and a reign of terror. Since the people subjected to terror and violence do not constitute a recognized armed force, they are deprived of the kind of protection to which attention has been drawn above. Where there is democracy the events are accessible to the free press, national and international and every violation of the laws which give protection to the people become a public issue and may bring retribution to those responsible for these violations.

During the army operation in the Golden Temple and other parts of Punjab we had a unique situation where those inside the Golden Temple or elsewhere who were under military attack had neither the protection of the conventions mentioned above nor protection of the free press and the laws of the land expected under a democratic state. The whole of Punjab and especially the Golden Temple complex, was turned into a murderous trap from where people could neither escape nor could they seek succour of any kind.

The government first turned out all foreigners who could be eye witness to the events. Most press people were made to vacate, too, except the representatives of government controlled press and media or a few who could be made to toe the official line. To ensure against leakages of truth a blanket ban was imposed on uncensored reporting on military operation or popular movement in Punjab. But truth might still be passed on orally by those coming to and going out from Punjab. So all traffic to and from Punjab was stopped. Trains and bus services were totally suspended. To prevent people even inside Punjab from knowing the truth serious curbs were put

on movement within the state itself. For this purpose most of Punjab was kept under curfew throughout the period when the army operation in Punjab was at a peak.

It is to be borne in mind that the attack on the Golden Temple was not a police operation of a minor nature, it was a full scale invasion in which all three wings of the armed forces, the army, the navy and the air force, had participated. Heavy mountain guns and tanks were used in a big way to blast away the buildings which could provide cover or shelter to those inside. The shelling was so heavy that many buildings outside but adjoining the Golden Temple complex were reduced to rubble. Obviously the 1977 protocols to the Geneva Convention seeking to limit military operation to specific military objects had no validity in the eyes of those directing operation Blue Star as the target was not an alien but an assorted crowd of priests, devotees, including women and children mixed with an unspecified number of alleged terrorists. Since no impartial observer was permitted during or for considerable time after the army operation, we will never know what was the exact number of dead. Most people put it at several thousand. Certainly no one believes in the army version of the casualty. Since the alleged extremists could not be more than a few hundred most of the dead could be only non-combatant men, women and children.

We do not know if any medical help was offered to the wounded not belonging to the armed forces. Since the number of those taken prisoners was comparatively small for such a large scale operation one may suspect that the military followed a policy of killing rather than having a large body of prisoners and wounded on hand to bother about. Since every one capable of becoming an impartial witness was kept out of Punjab we will never know what the army really did, unless some of the soldiers or the survivors of the attack dare to tell us what they really saw.

The way the dead bodies were disposed of adds to the suspicions regarding the number and the nature of the casualties. We have enumerated above the solicitude for the honour of the dead soldiers and then identification that has been shown in chapter 11 of Article 17 of Geneva Convention of 1949. But the bodies of the victims of military operation in Punjab were unceremoniously destroyed without any attempt to identify them and hand them over to their relatives. Since there was curfew all round no one could dare to come forward to claim a dead body. Only the dead or those wishing to be dead could take care of the dead after that cruel operation. So even the courtesy and honour customarily shown to the dead soldiers of the

enemy was not shown to our dead countrymen, since those killing them were our own soldiers. Because the government had decided to exterminate these victims physically they ceased to exist as persons deserving any honour or human dignity. We lack even the civility of the British imperialists, who after the Jalianwala Bagh bloodbath instituted the Hunter Commission to make a thorough enquiry into the events. The government after the operation, on the other hand did everything in its power to cover up the excesses of the army action by preventing even the press from making a thorough enquiry and freely reporting their findings.

The most disturbing thing about the entire operation was that a whole mass of men, women and children were ordered to be killed merely on the suspicion that some terrorists were operating from the Golden Temple and other Gurdwaras. There had been no judicial verdict of guilt against definite individuals who had taken shelter in the Golden Temple. There were only unproved allegations by the police that terrorist actions were being directed from the Golden Temple. Even a fortnight before the army operation Rajiv Gandhi was calling Bhindranwale merely a religious leader. Thus such a major military attack resulting in the massacre of largely innocent people was undertaken on mere suspicion which had been created by the statements of police and the government themselves. In fact the evidence of the crime of the victims of the army operation was furnished only after the execution had been carried through. That evidence is also of a dubious nature because it is based on the version of the armed forces who had taken care to see that no one remained around to see what was happening. It is possible that most of the casualty on the army side was caused by the licensed arms allowed in the Temple. The army might have provoked the inmates to use those arms to resist the military when the latter tried to move in.

With the passage of time the imposing picture of the arms build-up within the Temple has now begun to shrink in size. The heaviest arms which are claimed to have been recovered are light machine guns. Poised against the heavy tanks and armoured vehicles and the heavy guns of the Indian army they would appear as toys. But one cannot be sure about the authenticity of even that. After all, it is no problem for the government and the army to find an assortment of arms to make an exhibit when care had been taken to keep everyone out who could report on arms being brought by the army and paramilitary forces from outside to make out a case after their action. The army assault turned out to be a barbaric operation owing to the

circumstances in which it had been undertaken. Even in her broadcast of June 2, 1984, Indira Gandhi did not give a hint that a full scale invasion of the Golden Temple complex was about to take place. Since those in the Temple complex were not part of an army command, and were civilians with a scattering of alleged terrorists, there was no way for them to act in concert. Apart from the call on loudspeakers by the army to the inmates to surrender, no indication was given by them of the scale of armed operation that they were about to undertake. If sufficient care had been taken to make people realise the danger they were facing, most people, especially the large number of devotees who had been there would have left the complex. Even during military assault of a target in international wars, as we have pointed out in the beginning, such steps are expected by an assaulting force. But the people within the Temple complex and the whole of the nation were kept guessing about the steps the armed forces contemplated while the army had already begun its operation. After that those within the Temple complex and around it had little chance to escape. With curfew all round, in the face of heavy shelling, when buildings began to be blown up all round and hail of bullets from both sides the non-combatants could only abandon themselves to their fate. Thus 'Operation Blue Star' will go down in history as one of the biggest massacres of unarmed civilians by the organised military force of a nation. The word unarmed is used deliberately as the disparity in arms on the two sides was so great that those resisting the army invasion of the Temple could hardly be termed as armed. One has only to recall Mahatma Gandhi's words in the context of the Polish resistance to Hitler's invasion. Responding to a 'Polish Sisters' letter in 'Harijan' of 18 September 1939, he concluded..."if Poland has that measure of uttermost bravery and an equal measure of selflessness, history will forget that she defended herself with violence. Her violence will be counted almost as non-violence."

While Punjab bleeds and Sikhs feel trodden under and humiliated, the rest of the nation may harbour a false sense of security with the hope that the army operation in Punjab is a one-time affair. A close look will show that there is a sinister side to the whole operation. In the Punjab operation the Sikh regiments were kept out. That shows that either the government did not trust the Sikh soldiers to impartially carry out the order, or the Government wanted the operation to be undertaken by soldiers who could be thoroughly biased against the Sikhs subjected as they had been to intense propaganda by the government controlled media. Thus they could be expected to behave brutally towards the Sikhs. It was not the first time that the army has

been called in. Before this it had been called in Assam. Then, too, care was taken to keep the local soldiers out of the operation. In this way it could be ensured that the soldiers deployed for such operations would be immune from any sympathy for the local people and could behave as an army of occupation. May be in future the Sikh Regiment is used to put down some other segment of the population when there is a popular movement. In this way the defence forces might be fragmented and from a force to defend the nation it may be reduced to an army for use against the Indian people. As the frequency of its use against the Indian people rises it will be looked upon as an instrument of oppression as they are in many other third world countries. Lacking rapport with the people it will cease to have any defensive capability which it may now have. It will be reduced to one of the many pressure groups which manipulate political power. These are disturbing omens for the future of democracy and the civil rights of the Indian people.

Appendix-17

Amnesty International Reports 1985-1986

Amnesty International Report Indicts Government On Punjab

The Srikant Vermas and the K.K.Tiwaris are sure to be up to their tricks again. Barely a month after their virulent tirade against the CFD report on Punjab comes the Amnesty International survey on human rights which though couched in infinitely more guarded language, is damning enough for the Indian government (as it is for 122 other regimes around the globe). It should, therefore, hardly come as a surprise to anyone if yet another round of vituperative attacks follows directed against the familiar 'imperialist forces' and 'CIA machinations'.

“Many of the Amnesty International's concerns related to the state of Punjab”, says the report “which, since 6 October 1983, had been under direct (President's) rule by the Central government.” The two draconian amendments to the National Security Act (NSA) permitting detention without trial for up to two years of, persons suspected to be involved in acts prejudicial to the defence or security of the state, and requiring the courts when releasing a detainee to rule that all (as opposed to some) grounds for detention are invalid: the Terrorist Affected Areas (Special Courts) Act allowing trials in camera, shifting the burden of proof on the accused, and restricting appeals only to the Supreme Court within a reduced 30-days period; the brutal torture and cold-blooded murder of innocent Sikhs following the army action in the Golden Temple – all come in for Amnesty's scrutiny. As always, studied moderation characterises the organisation's style of reportage.

"On 14 June (1984) Amnesty International telexed the Prime Minister, acknowledging that the government had faced serious problems of internal security in the Punjab and asking whether the 6,500 people reportedly arrested would be charged with specific criminal offences or released. It urged the release of four Akali Dal leaders arrested under the NSA during or after the army action in the Golden Temple – including the Party's President – who had apparently not been involved in violence. It also asked for the findings of inquests which the Home Secretary had announced would be held, especially those into the deaths of 13 young Sikhs (who after having their hands tied behind their backs, were shot by soldiers in cold blood)."

The response from the government was typical. "On 30 June Amnesty International received a reply from the foreign secretary which emphasised that innocent people had been killed by terrorists in the Punjab and stated that these killings had not provoked any concern from Amnesty International. The government's reply did not answer any of the specific queries put by Amnesty International in its communications of 14 and 27 June."

Amnesty International's position *vis-a-vis* violence, whether by the State or by private groups, is unambiguous. The organisation, "as a matter of principle, condemns the killing or torture of individuals detained by anyone, including opposition groups, and recognises that the government has a responsibility to bring to justice those responsible for violence. Unfortunately, Amnesty International's methods of quiet persuasion appear to be becoming increasingly ineffective as is evident from the record of its correspondence with the Indian government. Not only were repeated requests for clarification regarding some of the disturbing trends in human rights compliance coolly ignored, but when the organisation informed the Foreign Minister in April 1984 of its intention to send a delegate to India to meet professionals involved in the protection of human rights, it was informed that a visa for such a visit could not be granted. No reasons were, of course, assigned for the refusal.

Reprehensible as such behaviour is by itself, what makes it outrageous is the blatant moral posturing that accompanies it. Nowhere are the double standards adopted by India (as indeed by several of her acolytes in the so-called non-aligned world) more conspicuous than in attitude towards South Africa – a subject of much topical concern. In the recently concluded Commonwealth Heads of Government meet at Nassau, nation after nation vied – with each

other in denouncing the Pretoria regime and calling for more concerted action against that country – action that is demonstrably calculated to hit the poorest of the poor rather than the white minority rulers. And yet, even a cursory glance at the record of these governments would reveal how utterly hollow their concern for human rights is, given the sordid happenings within their own boundaries.

TORTURES, ILL-TREATMENT AND DETENTION OF SIKHS WITHOUT TRIAL

Amnesty International's Scathing Criticism

"A strong indictment of government's treatment of Sikhs has been handed down by Amnesty International, a London-based human rights organisation with worldwide fame, in its report for 1985 which has just been released.

It has expressed its concern over incarceration of "hundreds of political detainees held without charge or trial under preventive detention legislation or awaiting trial under special legislation permitting trial in camera."

Amnesty International says it also received reports of torture particularly from areas where armed opposition groups were active some detainees allegedly dying in police custody as a result. There were also reports that alleged members of such groups were shot dead by security forces after capture in staged "encounters". The Amnesty International has also shown concern over executions.

In its chapter on India, Amnesty International report mentions that in a number of states repeated acts of violence accompanied the activities of opposition groups and resulted in killings of police officers, officials and civilians especially in Punjab. These activities placed a heavy burden on the authorities charged with maintenance of law and order bringing those responsible for criminal acts to justice. Many people were detained on suspicion of involvement in such violent activities, either under the provisions of the National Security Act (NSA), which permits preventive detention without charge or trial for upto two years, or under other new legislation.

Although the Supreme Court had ruled that death penalty should be imposed only in the "rarest of rare" cases, Amnesty International report points out, "dozens of people were sentenced to death" in

1985 as in previous years. However, the organisation did not have information regarding the number of executions actually carried out.

Here are excerpts from the report's chapter on India:

The Terrorist and Disruptive Activities Act 1985 was enacted in May, following a series of bombs explosions in New Delhi and neighbouring states which had killed an estimated 86 civilians. It was to be applicable throughout India for two years. The death penalty was made mandatory for "terrorist acts" which resulted in death. "Disruptive activities" were made punishable by three years to life imprisonment and defined as "any action taken, whether by act or by speech or through any other media, which questions, disrupts or is intended to disrupt whether directly or indirectly, the sovereignty and territorial integrity of India". Advocating or inciting such activities were also made similarly punishable.

Government ministers assured Parliament that the central and state governments would not misuse the new legal provisions to curb any legitimate political or trade union activity. However, Amnesty International was concerned that the broad definition of "disruptive activities" could lead to people being detained for peacefully voicing political opinions or being tried under procedures not meeting internationally recognized standards. The Act allowed detention without charge or trial for up to one year. It permitted trial *in camera*, without the identity of witnesses being disclosed, made bail more difficult to obtain and limited appeals to the Supreme Court. The government said on 8 August that 33 such cases had been tried by 18 designated courts and that states were instructed to apply the Act's provisions "sparingly". Special courts were reported to have been established in the Union Territory of Delhi and Andhra Pradesh, Gujarat, Punjab and Uttar Pradesh, as well as in Jammu and Kashmir.

Throughout 1985 Amnesty International expressed concern about arrests and detentions in Punjab. In January it urged the government to review the cases of detainees where there was no evidence that they had been involved in violent activities. Among those held under the NSA were reported to be Sikh priests, religious preachers and leaders of political parties, detained for making "objectionable" or "inflammatory" speeches.

In March Amnesty International welcomed the release of eight leaders of the Sikh political party, the *Akali Dal*. Army of Immortals whom it had considered prisoners of conscience, and the subsequent announcement by the Union Home Minister that the government was willing to release all detainees in Punjab against whom there were no criminal charges. Among such detainees were leaders of the

All India Sikh Students Federation, the ban on which was lifted on 11 April. On 12 April, Amnesty International asked for details of the individuals to be released, of whom 800 were reportedly held under the provisions of the NSA alone. By 17 July, the government was reported to have ordered the release of 1,371 people, while reports in the international press estimated that some 4,500 people were still held in connection with political activities in the state.

This program of releases accelerated after Prime Minister Rajiv Gandhi and *Akali Dal* leader Sant Harchand Singh Longowal reached agreement on 24 July over long-standing demands for greater autonomy voiced by members of the Sikh community. Punjab remained under central government administration until state elections on 27 September resulted in an *Akali Dal* administration. By this date, a total of 2,200 further releases had been officially reported.

On 1 October, Amnesty International informed the new Chief Minister of Punjab of its concerns in the state. The new government announced the release of 224 further detainees held under the NSA and established a committee to review the cases of an estimated 2,400 people still detained after during the previous three years. By the end of 1985 the committee was reported to have recommended the release of more than 2,000 detainees and the withdrawal of cases against 450 people arrested during or after violent event at the Golden Temple in June 1984. The central government subsequently said that 377 of them charged with waging war and awaiting trial in Jodhpur jail would not be released. Amnesty International was still investigating the cases of several Sikhs who had been detained for many months without charge or trial under the NSA. One was rearrested on 9 December for alleged sedition immediately after the Punjab High Court had ordered his release from over 12 months' detention.

During 1985 Amnesty International also expressed concern that existing legal safeguards for detainees in Punjab were not always observed. In March Amnesty International wrote to the Governor of Punjab about reports that in at least five cases the government had failed to release people detained without trial under the NSA, although their release had been recommended by the Advisory Board established under the Act. Amnesty International also received other complaints some in the form of signed affidavits to the Supreme Court, alleging misuse by the police of their wide powers of arrest and detention under special legislation in force in Punjab. If a person wanted by the police could not be found, relatives were allegedly arrested, sometimes beaten and detained. The police were also accused of falsely implicating people in offences punishable under the Arms Act by planting weapons on them after arrest.

Amnesty International was concerned that political detainees faced trials by special courts. The Minister of State of Home Affairs stated that, as of 22 March, 1,785 cases had been conducted before special courts in Punjab and a further 3,264 cases were pending. On 24 July the Punjab Government announced the immediate withdrawal of the Armed Forces (Special Powers) Act, 1983 (which had widened army powers of arrest), declared that the state was no longer a "terrorist affected area" and restricted the mandate of special courts established under the 1984 Terrorist Affected Areas (Special Courts) Act. Amnesty International welcomed these developments in a communication to the Prime Minister, pointing out, however, that those accused of "waging war" and "hijacking" would still face trial before special courts under procedures which shifted the burden of proof and permitted trial *in camera*. In its October communication to the Chief Minister of Punjab, Amnesty International welcomed the new state government's announcement of 26 September abolishing special courts and requested that the cases of those convicted by them be reviewed as their procedures fell short of international standards for a fair trial.

Amnesty International also received reports of people arrested in connection with political activities being tortured and ill-treated in police stations of Punjab. In that state, a judge visiting Nabha Central Jail reported that detainees had a log rolled over their thighs or their legs pulled apart. Beatings on the soles of the feet and on the body while suspended from the ceiling, were also frequently reported from Punjab. Similar allegations were repeatedly received concerning Delhi police stations, where Sikhs were interrogated about acts of violence which occurred in the capital.

Appendix-18

Amnesty International Report on Jodhpur Detenues

This document includes first hand accounts from relatives of the detainees which indicate that, in the absence of any evidence to the contrary, many detainees were in the Golden Temple for religious or professional purposes and not in connection with the activities of armed Sikh groups or any attempt to "Wage war against the government".

It also describes the torture of 60 of the detainees now in Jodhpur Jail who were previously held in Ladha Kothi Jail, Sangrur, Punjab from September 1984 to mid-January 1985. An official commission established by the Punjab state government recommended that compensation be paid to these detainees and the disciplinary action be taken against the police officers reportedly involved. The compensation was paid in early 1988, but no disciplinary action has been taken so far, even though the Supreme Court has ordered an inquiry in respect of the police officers involved, to be completed by the end of July 1988.

The document is also concerned about the conditions in which the detainees are held in Jodhpur Jail, including the conditions in which visits take place and the lack of medical treatment. It is concerned too by reports that some of the detainees have shown signs of insanity but have not been able to get appropriate treatment.

Detention and suspension of the trial of Sikh detainees held under the Terrorist Affected Areas (Special Courts) Act in Jodhpur jail since 1985.

Detention

Thousands of Sikh men and women were arrested during and after "Operation Bluestar" in June 1984. The government released most of them during that year and by January 1985 announced that 379 of them, who remained detained under the provisions of the National Security Act, would be tried by a Special Court established under the Terrorist Affected Areas (Special Courts) Act, 1984, Justice

C.S. Tiwana, investigating the conditions in which 60 of them had been held before taken to Jodhpur jail, found that their initial detention had been illegal since they had not been brought before a magistrate within 24 hours of arrest as the law requires.

Charges

There have been two sets of charges against the Sikh detainees held in Jodhpur Jail. The first, identical for all detainees, was brought on 15 January 1985. An additional chargesheet is dated 5 March 1987. It is phrased in similar terms to the original chargesheet except that Gurcharan Singh Tohra, President of the Shiromani Gurdwara Prabhandak Committee (SGPC) is named as the main accused. First arrested on 6 June 1984 with other SGPC leaders, he had been released on 19 April 1985, there being no evidence against him. But he was rearrested two and a half years later on 2 December 1986. The charge against Mr. Tohra is that, as SGPC President, he abetted the "waging of war" by failing to prevent unlawful activities in the Golden Temple complex such as the collection of stocks of arms inside the temple by armed Sikh groups who "ultimately waged war against the Government of India when the Indian security forces tried to vacate the premises of these elements."

The two chargesheets against the detainees give a lengthy description of events leading up to the army action in the Golden Temple, and of the action itself, as seen by the police. They state that the Sikh detainees in Jodhpur were engaged in armed confrontation with the military and paramilitary forces in the Golden Temple in June and specify: "During the operation, the army had captured a large number of terrorists out of which a total of 382 were found to have actually waged war against the government of India by actually confronting the military and para-military forces during the period 5-10.6.84. These 382 persons had entered into criminal conspiracy amongst themselves and with Shri Gurcharan Singh Tohra and certain others to overawe the Central Government by means of criminal force and had ultimately waged war". Charges have been filed under section 121 of the Indian Penal Code (waging, attempting to wage or abetting the waging of war against the government of India) and section 25/27 of the Arms Act, 1959. The accused are named as Harminder Singh Sandhu (the leader of the All India Sikh Students Federation) and others, as listed in an Appendix to the first chargesheet.

Neither the first chargesheet nor the additional chargesheet filed after Mr. Tohra had been made the principal accused in the case shows evidence of violent activities or armed insurrection against the

individuals now detained in Jodhpur, which would substantiate the charge of their alleged involvement in "waging war" (although some details are given in support of the charge that Mr. Tohra had "abetted waging war"). All the detainees are described as "terrorists". The original chargesheet mentions that on 5 June 1984, "terrorists and others entrenched in and around the Golden Temple Complex were asked at 16.30 hrs. and onwards to come out and surrender by 17.30 hrs. by making announcements over (the) public address system." It adds that "the announcement was made in Punjabi from three different places and within the hearing distance of persons in and around the Golden Temple Complex", the implication apparently being that pilgrims and others caught in the cross-fire could have surrendered and that those remaining in the temple, who were arrested had participated or conspired to participate in armed opposition.

However, independent observers have pointed out that these announcements could not be heard by people caught up in some parts of the Golden Temple and that some of them were afraid to move out, feeling safer inside the Golden Temple complex. For example, Ranbir Kaur, a nineteen year old woman staying in the Guru Ram Das Serai a hostel in the Golden Temple Complex, with twelve children from a religious school, told Mark Tully and Satish Jacob, authors of *Amritsar, Mrs. Gandhi's Last Battle* (London, 1985) that she did not hear any appeals by the army to surrender or come out of the hostel. When asked if she did not want to leave on her own, she replied by saying that "we thought we were safer inside. We never thought they would attack the Temple." Pilgrims in the temple are quoted as saying that they were terrified by the firing of rifles and machine guns. Many of them inside the hostel complex were eventually evacuated, but according to Tully and Jacob: "many innocent people were killed, many injured, and many wrongfully arrested." Amnesty International believes that the majority of now held in Jodhpur had been so wrongfully arrested.

Circumstances of Arrest

Since taking up their cases for investigation in October 1986, Amnesty International has been able to collect first-hand information on the circumstances of arrest of the detainees and the reasons for their presence at the Golden Temple in June 1984. These data appear to show, in many cases, that the detainees were indeed caught in the cross-fire and were not in the Golden Temple to "wage war against the government." Among them are temple employees of the SGPC who were arrested from the Golden Temple and charged with "waging

war" although apparently present simply for professional reasons. For example, relatives of one such temple employee, Kulwinder Singh, said. "He...was actually on duty on the fateful night...He even produced written proof of his having been an employee of the SGPC but to no avail." Other relatives said: "Satnam Singh...Was only performing his duty as an employee of the temple at the time of his arrest." Thereof the 41 SGPC employees were released in early March 1988. Relatives of the other SGPC employees have made appeals for the release of the detainees but have so far been unsuccessful. Amnesty International has seen no evidence to show that these temple employees did participate in the activities of armed Sikh groups.

Chamkaur Singh

Families of many other detainees say that their arrested relatives had gone to the Golden Temple for religious purposes. They point out that it was time to celebrate the martyrdom day of the fifth guru, Arjan Dev Ji, on 3 June 1984, when many pilgrims would stay at the temple, either for praying or to do sewa (free service). They say that the army entered the Golden Temple after curfew had been imposed and that their arrested relatives were caught in the cross-fire. For example, the relatives of Chamkaur Singh say:

"In the early hours of 3 June 1984, life was totally paralysed. Curfew was imposed throughout Punjab. There was no life on roads and katcha paths. Even cycles and bullock-carts were not allowed to move. There was army everywhere. Chamkaur Singh had gone to Sri Harmandir Sahib to have a holy dip on the martyrdom day of the fifth guru, Sri Guru Arjan Dev Ji. So he was nabbed by the army on 3 June 1984 from Chowk Sahidan which is very near to Darbar Sahib premises. He went to the Golden Temple to have a holy dip and was a pilgrim. But before he was to reach the Golden Temple he was nabbed near the Golden Temple. There is no question of Chamkaur Singh's participation in fighting."

Another example is the case of Raju Singh whose family writes about his arrest:

"He was a student studying in Jagdev Kalan village school. After school hours he used to run a wheat grinding mill (chhaki). In June 1984 he had gone to Amritsar to collect dresses from the tailor and went to the Golden Temple to pay homage as that was a day of religious importance. He was unaware about

the tension around the Golden Temple and was trapped during Operation Blue Star. He was wounded in the subsequent firing. Till today his mother is not clear about the chronology of the events but the gist is that he spent two months in hospital and another two and a half months confined to makeshift jail in Amritsar cantonment. Then he was shifted to Nabha Jail and then to Jodhpur."

Hari Singh

The wife of Hari Singh writes that:

"My husband had gone to Amritsar to pay homage at Darbar Sahib (Golden Temple) Amritsar on 3.6.84 on the occasion of martyrdom day of Guru Arjan Dev Ji. This day is always celebrated (with) enthusiasm and people are served with sharbat (sugar mixed with water). An announcement was made by the government imposing (a) curfew in the city as well as in (the) whole of Punjab. Next day Blue Star Operation (was) launched and it continued up to 7th June 1984. Thousands men and women and children were killed in the operation. Fortunately my husband escaped and (was) arrested by the government along with 400 others."

Some families say that their arrested relatives travelled to Amritsar for professional reasons and were caught in the cross-fire. For example, relatives of Savinder Singh state:

"He went to Amritsar in June 1984 in order to deliver a truckload of wheat. We had collected the wheat from this area for donation to the free kitchen which is run daily in the Golden Temple Amritsar. While we were there, the Golden Temple was surrounded by the army carrying out its "Operation Blue Star." My son and all the others with him were arrested. He has been in prison ever since that time.

A similar account is given by relatives of Niranjana Singh of Jalandhar who is said to have had a glass business in Jalandhar and to have gone to Amritsar on 1 June to buy goods. One of the relatives writes:

"Unluckily, on that very day, curfew was imposed in Amritsar as the Indian Government had planned Operation Blue Star. It was very late. He could not come back to Jalandhar and he

had to stay in the Golden Temple. As Indian troops attacked the Golden Temple, he was arrested there."

Balvinder Singh's relatives give the following reasons for his presence in the temple:

"Balvinder Singh was the head of our panchayat (village council). In this capacity, he was involved with the proposed construction of a tar road linking our village to the next village of Jalalabad. He went to Amritsar to discuss the road plans and some other village matters. As he was unable to finish all his business until very late in the evening, he decided to spend the night in the Golden Temple."

Iqbal Singh

Others seem to have been arrested simply because they live near the Golden Temple. The father of Iqbal Singh, now held in Jodhpur, explains that they:

"had been living in an allotted compartment of the Golden Temple complex. On 6 June 1984, military personnel took me and my family including (my) eldest son to jail. Till 8 June 1984, my eldest son was with me. Hereafter he was admitted to Guru Teg Bahadur Hospital because of bleeding of his ear while he was being beaten. The hospital was under military control. All of us (except my eldest son Iqbal Singh) were released on 12 June 1984. I didn't hear from my son for 5-6 months. We didn't even know whether he was still alive or not. After about 6 months we were told that he was in Central Jail, Ludhiana."

A similar account is given by Harcharan Singh Ragi, father of Raminder Pal Singh. He writes:

"I have been living in this quarter along with my family since 1961. The quarter is within the Golden Temple Complex. We, the nine members of two families including wives and children were arrested from our homes by the army personnel during Operation Bluestar in June 1984. We, eight members were released from the army custody on 23 June 1984 but my youngest son, Raminder Pal Singh who was 19 at the time was detained. I may add that I am a ragi (devotional singer) employed by the Golden Temple since 1961 and my son had been assisting me off and on."

In the absence of any specific evidence to the contrary, these accounts appear to show that these people were pilgrims or professionals present in the Golden Temple for purposes unconnected with the activities of armed Sikh groups or any attempt to "wage war against the government."

Trial inside Jodhpur Jail under the provisions of the Terrorist Affected Areas (Special Courts) Act

The Terrorist Affected Areas (Special Courts) Act permits the establishment of special courts sitting in camera and allows the identity of witnesses testifying before a special court to be kept secret. An appeal against orders given by the special court must be made within 30 days and can be made only to the Supreme Court. The likelihood that accused persons will be fairly tried under these provisions is considerably reduced because of the changed rules of evidence which apply under the Terrorist Affected Areas (Special Courts) Act combined with Section 111A of the Indian Evidence Act. Not only can the identity of witness be kept secret a provision which could inhibit effective cross-examination of their evidence – but these special provisions also transfer the burden of proving innocence to the defendants charged with "waging war" in cases in which their arrest took place "at a time when firearms or explosives were used at or from that place to attack or resist members of the armed forces." This is the case with those arrested in and around the Golden Temple in June 1984 when the army carried out "Operation Bluestar". These special rules are contrary to the presumption of innocence which is both customary in Indian law and also provided for in Article 14 (2) of the International Covenant Civil and Political Rights, to which India is a party. Under these rules all those held in Jodhpur Jail who were arrested at the Golden Temple in 1984 will have to prove their innocence of the charge of "waging war".

Section 2 of Article 12 of the Terrorist Affected Areas (Special Courts) Act, 1984, provides that a special court may, on an application made by a witness or by the public prosecutor, take such measures as it deems necessary for keeping the identity and address of a witness secret. During the trial in Jodhpur, the prosecutor apparently asked for a blanked court order that all the names of witnesses in the headings of police statements be deleted. The defence counsel opposed the request, arguing that it would be impossible to cross-examine witnesses if the defence did not know who they were. The Special Court judge K.C. Sharma, rejected the request of the prosecution on 8 May 1985, saying that he would give orders on the basis of

separate applications regarding individual witnesses. But the police of the Central Bureau of Investigation filed an appeal in the Supreme Court against the order of the judge, apparently reiterating the request that all identification of prosecution witnesses be withheld.

The appeal (No. 465/85) has been pending since 11 July 1985 and there has been no progress in the trial since then, even though the Prime Minister has said that he is aware that there is a problem with their continued detention, in an interview with a BBC Panorama team on a query about the Jodhpur detainees: "There is a problem there and we are stuck because an appeal has been launched and that has got the proceedings stalled. But we are trying to get over that. We realize the problems of the people we are holding." Yet, despite these assurances no steps have been taken by the government to enable the trial to proceed or, alternatively to release the detainees, if necessary on bail.

Amnesty's Probes

In October 1986, when Amnesty International started investigating the cases of the 379 Sikh detainees, it expressed concern to the Indian Prime Minister that these detainees were apparently being held beyond the two-year legal maximum period permitted under the NSA. Amnesty International did not receive a reply from the Prime Minister but a number of Punjab state government officials, including the then Chief Minister, Mr. Surjit Singh Barnala and the Minister of Finance, Mr. Balwant Singh wrote to Amnesty International assuring it that the Punjab Government "has always been stressing the need for an early release of Jodhpur detainees and efforts in this direction are continuing." Later, the then Director-General of Police, Mr. Julio Ribeiro, referred Amnesty International to the Director of the Central Bureau of Investigation (CBI) in New Delhi who, he said, was handling these cases. But no reply was received to the numerous letters Amnesty International sent to the CBI and other officials of the central government.

Torture of 60 detainees at Ladha Kothi

Sixty of the detainees now held in Jodhpur were earlier held in Ladha Kothi Jail, Sangrur, Punjab, during the period September 1984 to mid-January 1985. During this period they and 30 others also arrested at the Golden Temple in June 1984 were brought over in groups of 4 to 8 from Nabha Jail for interrogation in Ladha Kothi Jail. The purpose was apparently to extract information about whether

these detainees had connections with armed Sikh groups and about their involvement in political activities. These detainees complained to a judge visiting the district jail at Nabha in December 1984 that they were tortured during interrogation in Ladha Kothi Jail. Subsequently the district and sessions judge of Patiala visited them on 23 January 1988. He confirmed that during the period from 30 August 1983 to 11 January 1985, 92 detainees were taken for short spells in groups from the jail at Nabha to Ladha Kothi, where all claimed to have been tortured during interrogation. They gave similar accounts of the methods of torture inflicted upon them. In order to investigate these allegations further, an official commission of inquiry was established by the Punjab state government in the late November 1985, during the period when Punjab was administered by an elected Akali Dal administration.

Justice C.S. Tiwana, who carried out the inquiry, based his report on 14 interviews with detainees conducted in Nabha jail by the district and sessions judge of Patiala. The detainees alleged that they had been tortured at Ladha Kothi Jail. The judge also obtained affidavits from 52 detainees held in Jodhpur Jail and took statements from five detainees who had in the meantime been released.

The commission concluded that all the statements made to it by the detainees were credible, and 90 of the detainees had been tortured in Ladha Kothi Jail, where they had been taken for that purpose. In paragraph 23 of his report Justice Tiwana explained why in the commission's view, this torture took place:

"This initial detention of several persons being illegal and none of them having been produced before a magistrate within 24 hours of their arrest, the government thought it better to pass orders of detention under the National Security Act. In that manner they could detain any person for a period of three months as provided by sub-section (3) of Section 3 of the National Security Act read with Article 22 of the Constitution of India. I am of the view that this kind of decision was taken by the government that by interrogation of the detainee it should be found out whether any of them could be connected with any criminal offence. This necessitated the torture of detainees at the Ladha Kothi Jail. Those persons who could not be connected with any crime were then prosecuted for rebellion against the state. In this manner, the motive for the torture of persons arrested either from the Golden Temple or from any other Gurdwara is firmly established."

The commission said that two methods of torture had been particularly common in Ladha Kothi Jail between 31 March 1984 and 31 March 1985:

(i) Use of an extra thick pestle or log of wood, for pressuring the nerves of the thighs. The log is used in two different ways. Either it is placed on the front side of the thighs or on the back. In the latter position, the lower parts of the legs are folded and are pressed against the log. In former position, with one person standing at his back supporting his back with his knees and holding his shoulders with his hands. In this way, the person is fixed to the ground. The legs are spread on the floor and the log is placed on the thighs. One person or two persons sit or stand on the log causing intense pressure on the nerves.

(ii) The second form of torture consist of stretching the legs apart to the extent the victim finds it unbearable. This is done in two different ways; in a sitting posture and in a lying posture. In the first position, the victim is made to sit on a plain surface and his hands are tied-up or hand-cuffed behind his back. One person stands at his back taking his position inside the loop formed by the handcuffed arms and supports his back with his knees. Two other persons hold his legs at the ankle level. They hold one leg each and push them apart to the maximum extent. In the other position, the individual is made to lie down on a plain surface. His shoulders are held by two persons so that he is firmly fixed to the ground and two others hold the legs at the ankle level and pull the legs apart."

The report also includes extracts from sworn statements the commission took from individual prisoners. For instance Harminder Singh Gill, a medical student and brother-in-law of Manjit Singh, assistant manager of the SGPC who is also detained at Jodhpur Jail gave the commission the following account of torture during his stay, totalling 28 days, at Ladha Kothi Jail:

"First time I was shifted to Ladha Kothi in October 1984. I was locked up in solitary cell. On the next date they started my interrogation. Two policemen opened my door and tied my eyes with my full turban and handcuffed me at the back. They took me to an interrogation room. On the very moment when I entered the room four of five men I don't know their identification started slapping me and hitting me. They asked

questions what is your relation with Sant Bhindranwale? In how many robberies, murders and dacoities did you indulge? How many times did you visit Pakistan? Being a student of medical class I was unable to give answers to these questions. They threatened me to give confessional statements but I was having nothing in this regard. Then they started torturing me. First of all they lay me prostate and tied my arms and back and one policeman held my hairs tightly. On my naked legs they placed a wooden log. They pressed my legs on the log which was wrapped in a cloth. This was unbearable pain...They repeated this process many times with the continuous burst of questions. This process continued for the whole day. I was not allowed to sleep at night. In the night they interrogated me mentally. Whenever I tried to sleep they slapped or kicked me or they pour cold water on my body.

On the very next day they applied another method of torture. They sat me upright with my arms tied at back. One policeman put his leg in my tightened arms and one unfold my hairs and hold them tightly. On my unfolded naked thighs they placed a heavy wooden log, two policemen stood on log and rotated it to and from with which muscles of them also give first blows to my thigh. The nerves of legs also got heavy pressure with the result to which I became unable to walk. This process was repeated several times. I remained in interrogation.

Another method which they applied is: They sat me upright, tied my arms at the back and one policeman put his leg in my folded arms. Four policemen held my legs tightly and started stretching apart with consistent fist blows on my thigh. With this, the thigh nerves got heavy pressure. Sexual nerves also got heavy pain. This process they repeated for the whole day. All this continued for nine days. With the result of which I became unable to walk, stand or to sit easily.

Again after three months, i.e. in December 1984 they shifted me to Ladha Kothi...Again they repeated whole this."

The commission's report noted that eight detainees interviewed by the district and sessions judge had not been able to meet other detainees before their statements were recorded, and "Yet all of them made identical statements." This led the commission to conclude that "they must be describing the methods truthfully."

Another victim was Manjit Singh. He was employed as assistant manager of the Golden Temple and was arrested with other employees

of the SGPC, while he was on official duty. In a sworn statement, he said that while at Ladha Kothi:

"I was lodged in a very small and very dirty cell and next day the routine process of my interrogation was started, with my hands cuffed on my back and eyes covered with a pad of cotton. At the first instance a volley of questions was thrown at me. "So? You are the brother of Bhai Amrik Singh, you must be knowing every bit of Bhindranwale and his deeds. Wherefrom the weapons came, where the weapons were stored, how the murders were planned and executed" and thousands of queries related to Sant Bhindranwale, Bhai Amrik Singh, Harminder Singh Sandhu and their schemings. On my straightforward talk that no doubt I am the younger brother of Bhai Amrik Singh but I was not at all concerned with any political activity rather. I am working as assistant manager in Darbar Sahib. I absolutely had no knowledge about violent activities in Punjab, so naturally I denied having any such knowledge....Though they did not beat me physically but made me stand straight for longer periods. I was kept awake for one week. Sometimes I experienced an intense headache and unbearable depression on my mind. Often I will loose control and limp forward to fall but they will throw water over my face and warn me to stand straight. After one week, I was mentally dull and confused. Though interrogators were convinced after one week interrogation that I had nothing to vomit out but I was kept in Ladha Kothi for 28 days. The other 21 days can be considered as a healing period for the mental and physical shocks I had as an effect of torture."

Jasbir Singh, son of Harbans Singh, was arrested together with his brother Randhir Singh. Both are students. According to their father, they had gone to the Golden Temple on 3 June and on their return had been arrested at Pashian Bazar, near the Golden Temple together with 6 others. According to the report:

"Jasbir Singh was tortured at Ladha Kothi from 18 October 1984 to 27 October. He fell unconscious on many occasions. As a result of torture he became sexually impotent. He also could not walk properly for a period of six months after his torture."

The report names four men who were unable to walk for several months because they had their legs stretched apart under torture: one victim was unable to walk for as long as six months. Two men had been subjected to sleep deprivation and several others had fallen

ill as a result of torture. In at least one of these cases, according to the Commission, medical assistance was not given.

The Commission recommended that compensation of 20,000 rupees be paid to two detainees, Rs. 15,000 to eleven of them, including Harminder Singh Gill and Rs. 10,000 to the remaining 77. The detainees to whom Rs. 20,000 compensation was granted were Manjit Singh and Jasbir Singh. In August 1987, the Special Court judge trying these prisoners in Jodhpur Jail issued an order confirming that this compensation should be paid to all those mentioned in the Tiwana Commission's report.

The report also recommended disciplinary action against 21 police officers, all of whom were identified by the commission by name. They included the Superintendent of Police (SI) at Ladha Kothi, two Deputy Superintendents of Police and 18 police officers, five of whom were identified by one or more of the victims in their affidavits. The report recommends that measures be taken against them under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. After serious consideration, the commission did not recommend criminal proceedings on grounds which included difficulties of proving responsibility for torture to the satisfaction of a court of law, fear that relatives might be intimidated and concerns that the Central Government could halt any such proceedings if direct rule from New Delhi were to be imposed in Punjab (such direct rule was indeed imposed on 11 May 1987). In paragraph 37, the judge observed:

I have seriously considered whether the respondents who have been held responsible for severe torture of detainees should be prosecuted for any of the offences under Section 330 and 331 of the Indian Penal Code. I do not consider this course to be feasible. It would lead to lengthy trials. Even the evidence in the court may not be considered sufficient for awarding the police personnel any sentences of imprisonment. There is also a likelihood that some of the police officers may escape conviction under the technicalities of the law. They may even win over the detainees concerned by putting pressure on them through their relatives. It was during President's Rule that the detainees were tortured and if again for some reason, President's Rule is imposed. It is likely that any prosecutions launched by the State Government now would be withdrawn. Thus the trial of the offenders would not serve any useful purpose.

However, no disciplinary action was apparently taken. In January 1988, the Supreme Court directed the government to inform the court of the steps taken to inquire into the conduct of police officers responsible for torture. Such measures were necessary, the Court

said, "to prevent recurrence of such acts in future." In March 1988, the Supreme Court directed the Punjab Government to inform the Court, within three weeks, about the steps it had taken to implement the recommendations in the Tiwana Commission report. When it became apparent that no steps had yet been taken, the Supreme Court passed an order on 26 April ruling that "it is desirable that an inquiry should be conducted against the officers, including Police Officers, in respect of whom findings have been rendered by Mr. Justice C.S. Tiwana in the report submitted by him. The Supreme Court appointed the Financial Commissioner (Appeals) Punjab, Chandigarh, to conduct the inquiry and the Secretary to the Government of Punjab, Revenue Department, Chandigarh to collect all material necessary for the inquiry. The inquiry was to be completed within three months. As of early August 1988 Amnesty International has no information as to whether the inquiry against the police officers named as responsible for torture has been undertaken and if so what its outcome is.

Detention Conditions

The 324 Sikh detainees at Jodhpur Jail are reported to be held in four separate barracks, with about 80 in each barrack.

After their transfer to Jodhpur Jail in early 1985, there was a total ban on visits to the detainees. The ban was imposed by the Superintendent, Central Jail, Jodhpur, apparently on instructions of the central government. It seems that no reasons were given for the ban, and relatives first obtained permission to visit the detainees only after they had approached the Supreme Court.

On 19 June 1986, the judge of the additional special court established in Jodhpur Jail to try the detainees ruled that such a total ban on visits was not lawful and ordered the Superintendent of Jodhpur Jail to make new orders regarding visits. The judge observed: "It is not disputed that undertrial prisoners are ordinarily entitled to interview with their relatives and friends. But the Superintendent has the discretion under Rule 49 (a) under para 22 and section 2 of the jail manual to refuse to allow any particular person to interview with the prisoners if it is against the public interest or for any other sufficient cause." The court then passed an interim order directing the superintendent "to resume interviews of parents and wives (in case they are not alive – real brothers and sisters) with undertrial prisoners."

At present, the Jodhpur detainees are allowed visits but only by blood relatives such as their father, mother, wife, husband, brother or sister. Children of detainees are allowed to visit if they are adult

but not otherwise. Visits are reported to be taking place once a week, on Saturdays. Friends and other relatives are not permitted to visit.

Relatives complained about the difficulties of travelling over 500 kilometres to Jodhpur from their homes in Punjab. Some of them apparently lack the money to do so. There are reported to be 24 detainees who have not received any visit from their relatives since their transfer to Jodhpur and eight detainees who have only been visited once.

Relatives' major complaint is that speaking to detainees during visit is extremely difficult: relatives are taken to one enclosure and the accused to another, each one constructed with iron bars and wire-netting in between. Intelligence officials occupy the corridor in between the two "cages" (as the relatives call them). Relatives say that they have to shout in order to be heard because of the distance between them and the prisoner because groups of detainees and their respective relatives all meet at the same time.

For instance, Harbans Singh Ghuman, father of Jasbir Singh and Jasbir Singh, both held at Jodhpur, had filed a complaint on 23 July 1986 in which he claimed that while both his sons were locked in one "cage", he and his wife were in another enclosure and that the distance between the two was so great that discussion on personal matters was impossible. He also said that the interview had to take place in presence and hearing of police officers. In his judgment of 14 August 1986, the Special Court Judge ruled however that "such arrangements cannot be said to be improper or against rule where the consideration of security and safety gather paramount importance." The United Nations Standards Minimum for the Treatment of Offenders underline in Rules 92 that, although restrictions may be imposed in the interests of the administration of justice and the security and good order of the institution, untried prisoners should have reasonable facilities for communicating with family and friends, and for receiving visits from them.

Other restrictions which have been imposed on these detainees apparently on the order of the central government, include the censorship of all newspapers provided. Apparently, articles on Punjab are cut out of newspapers before they are supplied to the detainees.

The government has given special permission to some detainees to take exams and a separate jail ward is reported to have been set up (*Telegraph*, June 10, 1987). Apparently 37 detainees participated in examinations for various degrees in 1985, 183 in 1986 and 254 in 1987. Applications to appear in these examinations have to be made

to the Special Court established within Jodhpur Jail, and are apparently always accepted by the court subject to the condition that the examination will take place inside the Jail.

Insane Prisoners

Some of the detainees have shown signs of insanity while held at Jodhpur Jail. A team of People's Union of Civil Liberties lawyers visited Jodhpur Jail in February 1988 and noted that 23 of the detainees were mentally ill. Some of the 40 detainees who were released in March 1988 have made similar observations. For example, in an interview with *The Sunday Observer*, March 13, 1988, a released detainee is quoted as having said: "A middle-aged Sikh can't stop himself from hitting his head on the wall. His face looks like Hanuman (a Hindu god) it is so swollen....He hits his head till it bleeds." He observed that: "Another detainee in exasperation starts hurling any baggage or item he can lay his hands on. Yet another is in the habit of tearing his clothes. It was impossible...to control them. Eventually, the medical staff would come for them. They are being treated at the dispensary housed within the jail where they invariably have to be injected and put to sleep."

The following eight detainees have been reported to Amnesty International as being mentally disturbed:

Roop Singh, son of Gurdial Singh

Satnam Singh, son of Mohinder Singh

Surjit Singh, son of Sohan Singh

Rajpal Singh, son of Tej Singh

Karam Singh, son of Joginder Singh

Basant Singh, son of Bhagwan Singh

Desa Singh, son of Sunder Singh

Nirmalbir Singh, son of Surjit Singh, who is a sevader (servant at a Sikh temple).

The Standard Minimum Rules for the Treatment of offenders under Rule 82 provide that "persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible. Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institution under medical management. During their stay in prison, such prisoners shall be

placed under the special supervision of a medical officer. The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of prisoners in need of treatment."

No special treatment seems to have been made available to prisoners said to suffer from mental illness. The official response appears to have been to remove them to solitary cells. For instance, one of the 40 detainees released in the beginning of March is quoted in *India Today* of April 15, 1988 as having said: "Four persons went mad in my own barrack. They were Major Singh, Satnam Singh, Jaswant Singh and a youth from Uttar Pradesh. All these people were removed to solitary cells for several days and even weeks at times." Amnesty International is concerned that their lack of any knowledge about when their trial will resume and when their imprisonment will end may have had a negative impact on some detainees' mental health.

Medical Treatment

Relatives have made a number of complaints to Amnesty International saying that they believe the medical facilities are inadequate and that medical treatment has not been made available to a number of those who were tortured during the first months of their detention. Some say that medicines brought by them have not been accepted by the jail authorities. The PUCL delegation visiting Jodhpur Jail in February 1988 stated that "even the medicines prescribed by the jail doctor or by medical experts are not made available to the detainees in time."

On 27 November 1987 one of the defence lawyers filed an application before the Special Court seeking permission to get the Jodhpur detainees medically examined by a team of doctors of their own choice at their own cost. On the same day, the court ordered the Superintendent of Jodhpur jail to get Ajit Singh, who was alleged to be suffering from third degree tuberculosis, examined in hospital. Amnesty International has, as yet, not been able to obtain further details about the outcome of these two petitions.

The difficulties of obtaining adequate medical assistance are illustrated by the case of Swarn Singh, who had fallen ill. He was in need of medical attention and was forced to appeal to Supreme Court in early December 1987 in order to get the treatment he needed. Both the Central and the Rajasthan governments had apparently refused to pay for his treatment. The Supreme Court in order of 7 December 1987, directed the Rajasthan authorities to provide the necessary funds for the treatment of Swarn Singh. The Rajasthan

authorities afterwards reportedly attempted to get reimbursement of these expenses from the Punjab authorities.

Amnesty International has urged the Indian authorities to provide reasonable facilities to the detainees for communicating with their family and friends and allow them to be visited regularly and to be treated by a doctor or dentist of their own choice as is provided for unconvicted prisoners under Rule 91 of the United Nations Standard Minimum Rules for the Treatment of Offenders.

Amnesty has also repeatedly expressed grave concern over persistent human right violations in the country, and particularly in the Punjab demanding that India adhere to the international norms to which it is a signatory.

Appendix-19

Black Laws

A Legal Commentary

This note deals with the two Ordinances issued for amending the National Security Act in April and June 1984 (being Ordinance 5 of 1984 dated April 5, 1984 and Ordinance 6 of 1984 dated June 21, 1984) and the Terrorist Affected Areas (Special Courts) Ordinance, being Ordinance 9 of 1984 dated July 14, 1984.

My note does not deal with earlier laws restrictive of civil liberties which are still operative in Punjab and Chandigarh such as the press gag imposed by a notification issued under the Punjab Special Powers (Press) Act, 1956, The Chandigarh Disturbed Areas Act, 1983, or the Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983.

The National Security Amendment Ordinance No. 5

There are two features of this Ordinance which are particularly objectionable.

A detenu arrested under a law of preventive detention finds it virtually impossible to challenge his detention by filing a Habeas Corpus petition till the grounds of detention are communicated to him. Section 8 of the National Security Act (before its amendment) provided that the grounds of detention should be communicated to the detenu "as soon as may be, but ordinarily not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing, not later than 10 days from the date of detention."

The Supreme Court has observed in a reported decision that the grounds of detention should be available when the detention order is issued and should normally be served along with the detention order. The Ordinance amends section 8 so as to substitute "fifteen days" for "ten days". After the amendment a detenu may remain in jail for fifteen days without knowing why he is detained and without having any effective remedy against the detention. The extended period is available "in exceptional circumstances" but it will not be

difficult for the detaining authority to discover some exceptional circumstance to explain the delay.

Secondly, the Ordinance makes some draconian provisions in regard to persons arrested under detention orders before April 3, 1985. Under sections 10 and 11 of the unamended Act, the case of a detenu must be referred to the Advisory Board within 3 weeks of his detention and the Advisory Board must submit its report within 7 weeks of the detention. The Ordinance amends sections 10 and 11 so as to provide that the case of a person detained before April 3, 1985 may be submitted to the Advisory Board within 4 months and 2 weeks of his detention and the Advisory Board may submit its report within 5 months and 3 weeks of the detention. Thus a detenu covered by the amendment will undergo imprisonment for a period of nearly 6 months even if his detention is eventually found by the Advisory Board to be entirely unjustified.

In the case of persons detained before April 3, 1985, another amendment made by the Ordinance is to provide that they can be detained for a period of 2 years, instead of one year as laid down in section 13 of the Act. Thus a person is liable to be in jail for 2 years simply because the Executive believes that he is likely to behave in a prejudicial manner in the future.

A curious feature about the composition of Advisory Boards under the National Security Act deserves to be highlighted. By the Constitution (Forty-Forth Amendment) Act 1978, Article 22 (4) was amended so as to provide that an Advisory Board shall be constituted "in accordance of the recommendations of the Chief Justice of the appropriate High Court" and two others who may be either serving or retired High Court Judges. The amendments made by the 44th Amendment Act were to be brought into force on such date or dates as the Central Government may notify. Although the 44th Amendment Act was passed on June 10, 1979, the above amendment to Article 22(4) still remains unnotified.

According to Section 9 of the National Security Act, which was passed on December 27, 1980, more than a year and a half after the passing of the 44th Amendment Act, the Advisory Board is to be formed by the appropriate Government without seeking any recommendation of the Chief Justice of the appropriate High Court and the Advisory Board is to consist of three persons "who are qualified to be appointed as Judges of a High Court". Thus a Constitutional amendment duly passed by the requisite majority of Parliament has been virtually flouted by the Central Government for over five years, in order that Advisory Boards in laws of preventive detention should consist of Government nominees.

The National Security (Second Amendment) Ordinance, No. 6

The main purpose of this Ordinance is to introduce in the National Security Act two amendments which have already been effected in the COFEPOSA. The amendments in COFEPOSA have been challenged before the Supreme Court, but for one reason or another the Supreme Court has not yet pronounced its judgement on their validity. *Prima facie*, they are contrary to Article 21 of the Constitution which, as interpreted by the Supreme Court, provides that no person shall be deprived of his life or personal liberty except in accordance with a procedure which is just and reasonable.

One of these amendments introduces Section 5A in the National Security Act. This section provides that even if a detention order is based on several grounds, it shall be assumed to have been made separately on each ground, so that the order of detention will be valid even if only one of the several grounds on which it is based is free from any invalidity arising from vagueness, non-existence, irrelevance, staleness or any other reason. The section thus attributes to the detaining authority an intention which he may not have entertained, and makes it virtually impossible for the detenu to challenge his detention by pointing out that many of the grounds on which he is detained are invalid for one reason or another.

The second important amendment brought about by this Ordinance is in section 14(2) of the National Security Act. Section 14(2) as it stood before the amendment laid down that on the revocation or expiry of a detention order, a fresh detention order could be made only when fresh facts had arisen after the date of revocation or expiry. The amended Section 14(2) now lays down that after the expiry or revocation of a detention order, another detention order can be issued even if no fresh facts have arisen, provided that the total period of detention does not exceed 12 months.

The amendment has a very serious implication. In effect, it provides that if a detention order is held invalid by a court of law, the detaining authority can revoke the said order and can make another detention order on the same grounds provided the detenu is not thereby detained for a total period of more than 12 months.

As indicated above, both these amendments are *prima facie* invalid and are liable to be challenged as unconstitutional. In any case, they involve a serious encroachment on personal freedom.

The Terrorist Affected Areas (Special Courts) Ordinance No. 9

The provisions of this Ordinance can apply to any area in the country which is declared by the Central Government to be a terrorist affected area. At present the whole of Punjab has been declared such an area. The Ordinance, however, can be made applicable to any other area which the Central Government may consider to be terrorist affected.

In Section 2(h) of the Ordinance, the definition of "terrorist" is obviously too wide. The term "terrorist" can be applied to any person who causes "disruption of services or means of communications essential to the community", if he does so for "coercing or overawing the Government established by law." Thus, a body of workers who go on a strike in the railways or in the postal department with a view to pressurise the Government to accept their demands would come under the definition of "terrorists" and the area affected by the strike can be declared as a terrorist affected area.

The main purpose of the Ordinance is to set up special courts for the speedy trial of certain offences in terrorist affected areas so that the courts may sit at places other than the usual Court-rooms, the trials may be held *in camera* and the names of witnesses may not be disclosed.

Section 167 of the Criminal Procedure Code provides *inter alia* that where a person is arrested for an alleged offence and where investigation into the offence cannot be completed within 24 hours, he should be produced before a judicial magistrate. The magistrate may release him on bail or may order his continued detention, in which case the prisoner would be remanded either to judicial custody or to police custody. A judicial magistrate does not normally direct the prisoner to be in police custody unless the nature of the investigation requires that he should remain in the custody of the police. Section 167, moreover, lays down that the total period of custody shall not exceed 15 days unless the magistrate is satisfied on adequate grounds that custody for a longer period is necessary. Even in such cases the total period of custody is not to exceed 90 days in very grave offences and 60 days in offences of lesser gravity.

Several drastic amendments have been made by the Ordinance in Section 167 as well as to the provisions of the Criminal Procedure Code relating to the grant of bail. The Ordinance provides that, under Section 167, the arrested person may be produced before an executive magistrate and not necessarily before a judicial magistrate.

As is well known, executive magistrates are appointed by the Government and are amenable to executive influence. They are likely to relegate the prisoner to police custody whenever the police so desire.

The Ordinance also extends the ordinary period of investigation from 15 days to 30 days, and where adequate grounds are shown, to one year instead of 90 or 60 days. Thus, under the Ordinance, a person arrested for an alleged offence may remain in custody for a whole year without a charge-sheet being filed against him in a court of law! This amounts virtually to detention without trial for a period of one year.

On bail, the Ordinance deletes the salutary provision of anticipatory bail made in Section 438 of the Criminal Procedure Code. What is more, the Ordinance also alters the ordinary rule laid down by the Supreme Court that an undertrial prisoner, since he is assumed to be innocent till his guilt is proved, should normally be released on bail when it is found that he is not likely to abscond or to tamper with prosecution evidence. The Ordinance provides on the contrary that no person, accused of an offence scheduled under the Ordinance, shall be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of the alleged offence and further that he is not likely to commit "any offence" while on bail. In effect the Ordinance provides that the normal rule will be jail and not bail.

Another very objectionable provision of the Ordinance is the one which amends the Evidence Act by introducing section 111A therein. This Section will apply to any area which is declared a "disturbed area" under any enactment for the time being in force (there are several Disturbed Areas Acts in force in different States in the country) and also to "any area in which there has been, over a period more than one month, extensive disturbance of the public peace."

In such a disturbed area, if a person is alleged to have committed an offence under Section 121, 121A or 122 of the Indian Penal Code (sedition and connected offences) and if the prosecution shows that the accused person was at a place where firearms or explosives were used in an attack on the police or the armed forces, the accused shall be presumed to have committed the alleged offence unless he proves his innocence. It is well known that even minor acts of defiance are magnified by the police into offences of sedition under sections 121 and 121A of the Indian Penal Code. The above provision which throws the burden on the accused to establish his innocence is liable to be abused on a large scale.

Full Texts Of The Ordinances
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
 (Legislative Department)

New Delhi, the 21st June, 1984/Jyaistha 31, 1906 (Saka)

THE NATIONAL SECURITY (SECOND AMENDMENT)
ORDINANCE, 1984

No. 6 of 1984

Promulgated by the President in the Thirty-fifth Year of the Republic of India.

An Ordinance further to amend the National Security Act, 1980.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause(1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

Short title and commencement

1. (1) This Ordinance may be called the National Security (Second Amendment) Ordinance, 1984.

(2) It shall come into force at once.

Insertion of new section 5A.

2. In the National Security, Act, 1980 (hereinafter referred to as the principal Act), after section 5, the following section shall be inserted, namely:

Grounds of detention severable

"5A. Where a person has been detained in pursuance of an order of detention [Whether made before or after the commencement of the National Security (Second Amendment) Ordinance, 1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly –

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are :

- (i) vague,
- (ii) non-existent,
- (iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or Officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

Amendment of section 14

3. In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:

"(2) The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Ordinance, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order."

Amendment of section 14A

4. In the principal Act as applicable to the State of Punjab and the Union Territory of Chandigarh, in section 14A, in sub-section (2) –

(i) in the opening portion, for the words and figures "sections 10 to 13", the words and figures "sections 10 to 14" shall be substituted;

(ii) after clause (d), the following clause shall be inserted, namely:

- (e) in section 14, in the proviso to sub-section (2), for the words "twelve months", the words "two years" shall be substituted,'.

ZAIL SINGH

President

R.V.S. PERI SASTRI

Secy. to the Govt. of India

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 14th July, 1984/Asadha 23, 1906 (Saka)

THE TERRORIST AFFECTED AREAS (SPECIAL COURTS)

ORDINANCE, 1984

No. 9 of 1984

Promulgated by the President in the Thirty-fifth Year of the Republic of India.

An Ordinance to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution and of all other powers enabling him in that behalf, the President is pleased to promulgate the following Ordinance:

Short title, extent and commencement

1. (1) This Ordinance may be called the Terrorist Affected Areas (Special Courts) Ordinance, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

Definitions

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974),

(b) "High Court", in relation to a Special Court, means

the High Court within the territorial limits of whose jurisdiction such Special Courts is proposed to be, or is, established;

(c) "Judicial zone" means a judicial zone constituted under sub-section (1) of section 3;

(d) "Notification" means a notification published in the Official Gazette;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 9 and includes any person acting under the directions of the Public Prosecutor;

(f) "scheduled offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(g) "Special Court" means a Special Court or an Additional Special Court established under section 4;

(h) "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to –

(i) putting the public or any section of the public in fear; or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing or overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India;

(i) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(j) words and expressions used but not defined in this Ordinance and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Ordinance to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed to as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Declaration of terrorist affected area

3. (1) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Ordinance, it may, by notification —

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone, or into as many judicial zones as it may deem fit.

(2) A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Ordinance, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date:

Provided that

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may, by notification, extend such period from time to time by any period not exceeding six months at any one time, if the Central Government, having regard to the activities of terrorists in such area, is of the opinion that it is expedient so do to.

Explanation: For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Ordinance.

Establishment of Special Courts

4. (1) For the purpose of providing for speedy trial of scheduled offences committed in judicial zone, the Central Government may establish, by notification, a Special Court in relation to such judicial zone —

(a) within such judicial zone; or

(b) if the Central Government having regard to the exigencies of the situation prevailing in such judicial zone consider it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the State Government is of the opinion that it is expedient to establish in relation to a judicial zone, or in relation to two or more judicial zones, in the State, an Additional Special Court outside the State, for the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State –

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice;

the State Government may request the Central Government to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specific in the notification.

Composition and appointment of Judges of Special Courts

5. (1) A Special Court shall be presided over by a Judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.

(2) The Central Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(3) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is immediately before such appointment a Sessions Judge or an Additional Sessions Judge in any State.

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge

of a Special Court, of age of superannuation under the rules applicable to him in the Service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge or Additional Judges is, or are, appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

Place of sitting

6. A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is established:

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

Jurisdiction of Special Court

7. (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then —

(a) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the Central Government, having regard to the provision of sub-section (2) of section 4 and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the Central Government may make a declaration to that effect:

Provided that no such declaration shall be made unless the State Government has forwarded to the Central Government a report in writing containing a request for making of such declaration.

Explanation: Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established in relation to such judicial zone outside the State, and if any prosecution in respect of such offences is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

Power of Special Courts with respect to other offences

8. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

(2) If, in the course, of any trial under the Ordinance, it is

found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

Public Prosecutors

9. (1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Special Courts

10. (1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the

provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Ordinance, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

Power of Supreme Court to transfer case

11. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

Protection of witnesses

12. (1) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include —

- (a) the holding of the proceedings at a protected place;
- (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgements or in any records of the case accessible to public;
- (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Power to transfer cases to regular courts

13. Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Appeal

14. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgement, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgement, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Modified application of certain provisions of the Code

15. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";

(b) the references in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "one year" and "one year", respectively; and

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Special Court" and "Supreme Court", respectively.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a scheduled offence in a terrorist affected area.

(5) Notwithstanding anything contained in the Code, no person accused of a scheduled offence shall, if in custody, be released on bail or on his own bond unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(6) The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Overriding effect of Ordinance

16. (1) The provisions of this Ordinance shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Ordinance, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Ordinance, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the provisions of sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those provisions to a Magistrate shall be construed as a reference to the Special Court.

Delegation

17. The Central Government may, by notification, delegate, subject to such conditions as may be specified, all or any of the powers exercisable by it under this Ordinance [except the power under sub-section (2) of section 4 and the power under sub-section (2) of section 7] to the State Government.

Power to make rules

18. The Supreme Court may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Ordinance.

Saving

19. (1) Nothing in this Ordinance shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or any other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a Court of ordinary criminal justice.

Amendment of Act 1 of 1872

20. In the Indian Evidence Act, 1872, after section 111, the following section shall be inserted, namely:

Presumptions as to certain offences

“111A. (1) Where a person is accused of having committed any offence specified in sub-section (2), in –

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace;

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:

(a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal Code;

(b) criminal conspiracy or attempt to commit or abetment of, an offence under section 122 or section 123 of the Indian Penal Code.”

THE SCHEDULE

[See section 2 (f)]

PART I – INDIAN PENAL CODE

45 of 1860

1. Offences under the following provisions of the Indian Penal Code, 1860:

(a) sections 121, 121A, 122, 123, 124 and 124A;

(b) sections 128, 129 and 130;

(c) sections 131, 132, 133, 134, 135, 136, 138 and 140;

sections 153A and 153B;

sections 189 and 190;

sections 212, 216, 216A, 224, 225 and 225B;

sections 295 and 295A;

sections 302, 304 and 307;

(d) sections 308 and 326;

(e) sections 332, 333, 342, 343, 344, 346, 347, 353, 363, 364, 365 and 367;

sections 392, 393, 394, 395, 396, 397, 398, 399 and 436;
sections 505, 506 and 507.

PART II – THE EXPLOSIVE ACT, 1884

4 of 1884.

2. Offences under the following provisions of the Explosives Act, 1884:

Section 9B

PART III – THE INDIAN TELEGRAPH ACT, 1885

13 of 1885

3. Offences under the following provisions of the Indian Telegraph Act, 1885:

Sections 20 and 25.

PART IV – THE INDIAN RAILWAYS ACT, 1890

9 of 1890

4. Offences under the following provisions of the Indian Railways Act, 1890:

Sections 126, 126A, 127 and 128.

PART V – THE EXPLOSIVE SUBSTANCES ACT, 1908

6 of 1908

5. Offences under the following provisions of the Explosive Substances Act, 1908:

Sections 3, 4, 5 and 6.

PART VI – THE ARMS ACT, 1959

54 of 1959

6. Offences under the following provisions of the Arms Act, 1959:

Sections 25(1) excluding clause (b), 25(1B) excluding clauses (d), (e), (i), 26, 27, 28 and 29.

PART VII – THE UNLAWFUL ACTIVITIES (PREVENTION) ACT,
1967

37 of 1967

7. Offences under the following provisions of the Unlawful Activities (Prevention) Act, 1967:

Sections 10, 11, 12 and 13.

PART VIII – THE ANTI-HIJACKING ACT, 1982

65 of 1982

8. Offences under the following provisions of the Anti-Hijacking Act, 1982:

Sections 4 and 5.

PART IX – THE SUPPRESSION OF UNLAWFUL ACTS AGAINST
SAFETY OF CIVIL AVIATION ACT, 1982

66 of 1982

9. Offences under the following provisions of the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982:

Sections 3 and 4.

PART X – THE PREVENTION OF DAMAGE TO PUBLIC
PROPERTY ACT, 1984

3 of 1984

10. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984:

Sections 3 and 4.

Note 1: An offence specified in item 1(b) of Part I of this Schedule (that is to say, an offence under section 128, 129 or 130 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed in relation to a prisoner accused, charged or convicted of a scheduled offence.

Note 2: An offence specified in item 1(d) of Part I of this Schedule (that is to say, an offence under section 308 or section 326

of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed with a firearm.

Note 3: The offence of criminal conspiracy or attempt to commit, or abetment of, an offence specified in this Schedule shall be deemed to be a scheduled offence.

Note 4: The commission of an offence specified in this Schedule by any member of an unlawful assembly shall be deemed to be the commission of that scheduled offence by every other member of the unlawful assembly.

ZAIL SINGH

President

R.V.S. PERI SASTRI

Secy. to the Govt. of India

Appendix-20

Judgement in Sukhdev Singh Vs. Union Territory

1986 CRL.J. 1757

(PUNJAB and HARYANA HIGH COURT)

FULL BENCH*

D.S. TEWATIA, S.S. DEWAN AND M.M. PUNCHHI, JJ.**

Sukhdev Singh – Petitioner Vs. Union Territory, Chandigarh – Respondent.

Criminal Misc. No. 1798-M of 1986, D/-30-5-1986.

(A) Press and Registration of Books Act (25 of 1867), S. 7.
Editor – Presumption as to person whose name appears on copy of newspaper is editor – It is rebuttable – Person who controls selection of matter to be published in newspaper is editor.

The language of the S. 7 neither specifically nor by necessary implication excludes persons other than the Editor who may be made to answer a criminal charge. The presumption arising under S. 7 is two-fold (1) that he was evidently the editor and (2) every portion of the issue of the newspaper was published on his selection. Yet the presumption is rebuttable; that is to say facts to the contrary can be alleged and proved. Even additional facts can be proved over and above the presumption. In a given case, evidence can be led to prove that the Editor whose name in print occurs is a dummy or stooge but the real person who controls the selection of the matter that is published in the newspaper is someone else. Thus, the person who really controls the selection of the matter that is published in the newspaper is the actual editor and in a given case can be someone who is not the editor in name.

(Para 5)

* Case referred to a Larger Bench By M.M. Punchhi J. on 25-4-1986.

** In this case the Judges of the Full Bench differ in their views. The majority view is taken by S.S. Dewan and Punchhi, JJ. and the minority view by D.S. Tewatia, J.

(The judgements are printed in the order in which they are given in the Certified Copy.....Ed.)

Where the owner of a press deposed in his statement under S. 161, Cr.P.C. that he had been publishing in his press newspaper in question at the instance of the owner of the paper who always brought to him the printing material and after getting it printed would read the proof and then collect as many copies as required and also stated that though the ostensible editor had four or five times accompanied the owner to his press the payment of the printing charges used to be made by the owner of the paper and lastly stated that the issue of the newspaper in which a particular write up appeared was published at the instance of the owner who had come personally for the purpose and had checked the proof and after approval got all copies prepared which he took along with him, it could not *prima facie* be said that the owner of the paper had nothing to do with the write-up in question.

(Para 6)

(B) Interpretation of Statutes – Constitutionality of Act – Courts should lean in favour of constitutionality of Act.

In order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation. The Court must presume that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience.

(Para 7)

(C) Terrorist and Disruptive Activities (Prevention) Act (31 of 1985), Ss. 3 and 4 – “terrorist act” and “disruptive activity” – Article eulogising Bhindranwale and role of men who occupied Golden Temple by force – Suggestion also made to people to treat forcible occupiers of temple as their true representatives – Article also hailing act of killing of Prime Minister – Article falls within scope of expressions “terrorist act” and “disruptive activity”.

Majority view (D.S. Tewatia, J. Contra) : –

Where the article attributed to a person intended to eulogise Bhindranwale and extoll the role of the band of men who, pursuing his cult, occupied the Golden Temple by force and hoisted the flag of Khalistan. It further suggested to the Sikhs to treat the forcible occupiers of the Golden Temple as their true representatives and to prepare themselves for the attainment of Khalistan. It carried oblique reference to the virtues of the cult of violence and alienated one

section of people from another and to achieve these objectives, violence was indirectly propagated. It also hailed the feat of the killer of the Prime Minister of India, and had termed that act as one which avenged the insult to the Sikhs. Held the article plainly was a blended conglomeration of a variety of suggestive sinister thoughts coverable under the expressions "terrorist act" and "disruptive activity" as known to the Act.

(Para 13)

(D) Evidence Act (1 of 1872), S. 57 – Judicial notice – Govt. of India's White Paper on Punjab agitation – Information available therein as to who was Bhindranwale and what he stood for – Judicial notice can be taken thereof.

(Para 15)

(E) Terrorist and Disruptive Activities (Prevention) Act (31 of 1985), S. 17(5) – Grant of Bail – Condition precedent – Court must be satisfied that there are reasonable grounds to believe that accused is not guilty of offence under the Act and is not likely to commit any offence while on bail. [Criminal P.C. (2 of 1974), S. 437].

It is plain from the language of S. 17(5) that the Court must adopt a negative attitude towards bail but turn it positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of offence under the Act and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. Bail is at the most a matter of procedural privilege and not accrued right until it is granted. The Act as a legislative measure was passed in the circumstances which were compelling as the objects and reasons disclose. Its life is for a period of two years from the date of its enforcement in accordance with S. 1(3). It is a temporary measure taken when the integrity, unity and peace of the country was at stake. The Parliament in its wisdom considered such an emergent legislation necessary when the nation was in peril. The disorders which necessitated this legislation into being were the terrorist acts and disruptive activities of some and the Act is a measure to cope with them. The power of the Court to grant bail has advisedly been regulated in place of that conferred by the Criminal P.C. so as to promote and not defeat the efficacy of the legislation. Therefore, it is right for the Court to interpret the bail provisions in such a way.

(Para 17)

Held on facts that the accused who was responsible for publication of a write-up which constituted a "terrorist act" and "disruptive activity", was not entitled to be released on bail.

(Para 17)

Cases Referred: Chronological Paras

AIR 1986 SC 515: 1985 Tax LR 2451	10
(1983)2WLR620: (1983) 1 All ER.1062 (HL)	
Mandla (Sewa Singh) V. Dowell Lee	8
AIR 1979 SC 154	5
1968 Cri LJ95: AIR 1968 SC 110	5
AIR 1958 SC 538	7
AIR 1958 SC 731	7
(1942) AC 206	17

Ajmer Singh Sr.Advocate, H.S.Bajwa, S.S.Tej and Ajay Pal Singh with him, for Petitioner; Anand Swaroop, Sr.Advocate; Manoj Swaroop and Ajay Tewari, with him, for Respondent.

M.M. PUNCHHI, J. (Majority view): This petition for bail speedily climbed the ladder of being heard by a Full Bench. To begin with, when the matter came up before me sitting singly, I referred it to a larger Bench considering it to be of importance needing the powers of the Court to grant bail spelled out in view of the special provisions of bail occurring in the Terrorist and Disruptive Activities (Prevention) Act, 1985 (hereafter referred to as 'the Act'). When the matter, under orders of Hon'ble the Chief Justice, was placed before a Division Bench consisting of my learned brother D.S. Tewatia J. and myself, we considered that an important question of the interpretation of the provisions of Ss. 3 and 4 of the said Act was involved and thus we referred the case to a Full Bench. It is in this way that the matter has been placed before us. But it has stepped out its parameters as would be seen.

2. The petitioner Sukhdev Singh gives out that he is a Journalist of eminence with more than 20 years of professional career to his credit. He claims to have been associated with leading newspapers/news agencies such as 'The Indian Press Agency', Blitz, 'Economic Times' and 'The Daily Tribune'. The petitioner is said to be an owner and consultant Editor of a fortnightly English paper by the name of 'Dignity'. The petitioner is further said to be the 'all-in-all'

(karta dharta) of the said paper though for the purposes of the Newspapers Central Rules, 1956 one D.S. Gill, an Advocate practising at Ludhiana, is the Printer, Publisher and Editor of the paper. The address of Shri D.S. Gill, Printer, Publisher and Editor, that of the owner of the paper and of the petitioner is the same i.e. 707, Sector 7-B, Chandigarh. Its edition of March 2-15, 1986 bore an article titled as 'A Dalit View of Punjab Scenario' purportedly written by one V.T. Raj Shekhar. The petitioner claims that this article was firstly published by Shri V.T. Raj Shekhar as an Editor in his own Fortnightly paper 'Dalit Voice' of February 16-28, 1986 at Bangalore and that the 'Dignity' reprinted this article in its issue of March 2-15, 1986. It is further claimed that Shri V.T. Raj Shekhar is a Journalist who stands for the cause of Dalits i.e. backward and scheduled castes etc.

3. The Chandigarh police registered a case against the petitioner under S. 124-A/153-A, Penal Code and under S. 4 of the Act on 12-3-1986. The FIR is primarily based on the questioned article. The petitioner was arrested. He sought bail from the Presiding Officer, Designated Court, Chandigarh, but to no avail. The effort has now been repeated.

4. The petitioner has a right to obtain bail when presumed to be innocent is the clamour of S. Ajmer Singh learned counsel for the petitioner. He maintains that in view of S. 7 of the Press and Registration of Books Act, 1867, the Editor of the newspaper alone i.e. Shri D.S. Gill was responsible and that the petitioner could not be arraigned as an accused. On the strength of S.1(d) of the said act, it is asserted that the 'Editor' means the person who controls the selection of the matter that is published in a newspaper and since under S. 7 thereof the name of the Editor as printed on a copy of the newspaper is to be treated as sufficient evidence as against the person whose name is printed, he alone can be proceeded against in any legal proceedings: civil as well as criminal and that the presumption arising against the Editor by necessary implication excludes all others connected with the newspaper. I regret my inability to subscribe to the view. S. 7 reads as follows:

"7. Office copy of declaration to be *prima facie* evidence. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declaration, or, in the case of the editor, a copy of the newspaper containing his name printed on it as that of the editor shall be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name shall be

subscribed to such declaration, or printed on such newspaper, as the case may be that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every newspaper whereof the title shall correspond with the title of the newspaper mentioned in the declaration or the editor of every portion of that issue of the newspaper of which a copy is produced."

5. The language of the section neither specifically nor by necessary implication excludes persons other than the Editor who may be made to answer a criminal charge. The presumption arising under S.7 is two-fold (1) that he was evidently the Editor, and (2) every portion of the issue of the newspaper was published on his selection. Yet the presumption is rebuttable that is to say facts to the contrary can be alleged and proved. Even additional facts can be proved over and above the presumption. In a given case, evidence can be led to prove that the Editor whose name in print occurs is a dummy or stooge but the real person who controls the selection of the matter that is published in the newspaper is someone else. Thus, the person who really controls the selection of the matter that is published in the newspaper is the actual Editor and in a given case can be someone who is not the Editor in name. The decisions of the Supreme Court relied upon by the learned counsel in *Haji C.H. Mohammad Koya vs. T.K.S.M.A. Muthukoya*, AIR 1979 SC 154 and *State of Maharashtra vs. Dr. R.N. Chowdhri*, AIR 1968 SC 110: (1968 Cri LJ95), do not help his case, for it has nowhere been held in those cases that evidence cannot be led to show that besides the Editor, other persons too were responsible for the publishing of the matter in question.

6. The investigation alleges that the petitioner was all-in-all of the paper 'Dignity' and has recorded to that effect a statement of one Girish Kapur under S. 161, Criminal Procedure Code. Shri Kapur has stated that he has been publishing in his press newspaper 'Dignity' at the instance of the petitioner who always brought to him the printing material and after getting it printed would read the proof and then collect as many copies as required. Furthermore he has stated that D.S. Gill had four or five times accompanied the petitioner to his press but the payment of the printing charges used to be made by the petitioner by means of a cheque. Further he says that sometimes the paper had to be sent to the residence of the petitioner at 707, Sector 7-B, Chandigarh. Lastly, he has stated that the issue of March 2, 1986 of the newspaper was published at the instance of the petitioner who had come personally for the purpose, had checked the proof and after approval got all copies prepared which he took along with

him. On the basis of this material, it cannot *prima facie* be said that the petitioner had nothing to do with the write-up in question.

7. Reproduction of the question article in this judgement would be a wholesome burden. From a few extracts, the tenor of it can be gauged:

“Baba Saheb Ambedkar once said ‘what the Hindus love, we must hate and what the Hindus hate, we must love’. This simple Ambedkar formula for the guidance of Dalits can be applied whenever we are in confusion.

* * *

Right now in Punjab, the Hindus, meaning the upper castes, are very much worried over ‘extremists’ capturing the Golden Temple at Amritsar..... That means, these Hindus, who used to hate Barnala, Tohra, Badal and others have suddenly started loving them and want the pro-Bhindranwale ‘extremists’, who took over the Golden Temple, to be liquidated. So we know whom the Hindus love and whom they hate. Since they make no secret of their love and hate, it is equally easy for the persecuted minorities of India to come to the right decision at such crucial moments.

* * *

.....We have been proved right in saying that the All India Sikh Students Federation has become the representative organisation of the Sikhs and that the Akali Dal (L) and the S.G.P.C. have lost the confidence of the people. Barnala had the police under him and Tohra had the vast S.G.P.C. funds plus the armed guards, but neither could stop the militant, committed Bhindranwale boys from taking over the Golden Temple.

Why? Because the Sikh masses are behind Bhindranwale who today reigns supreme over Punjab. In other words, the ‘elected’ Akali Government, SGPC, the high priests and the low priests have lost the support of the people as they became puppets of the Hindus.

* * *

It was Bhindranwale who stirred up this stinking Sikh pond and Beant Singh, a Dalit Sikh who avenged the humiliation to Sikhs. It was Bimal Khalsa, a Ramdasia Sikh and the widow of Beant Singh, who led the canal construction blockade. They say it is these three people who restored the lost self-respect of the Sikhs. Not Longowal, not Barnala, not Tohra, not any high priest. One Bhindranwale may be dead but hundreds of Bhindranwale are born out of his blood.

* * *

It is better to die young like Bhindranwale, fighting, rather than live the life of donkey for 100 years without self-respect. That is why we often say that Dalits and other persecuted nationalities must learn how to die.

* * *

Today the situation in Punjab is worse than that of June, 1984. Small people have small minds. Barnala, Tohra, Badal proved to be small people. And Sikhs who think big and act big have rightly kicked out the small people.

The upper caste Hindus are never tired of lecturing on the 'unity and integrity' of India..... So much so, they are 'giving' 'Khalistan' to Sikhs on a golden plate..... Till now the Sikhs resisted all such temptations. But going by today's mood of Sikhs, they will take it — come what may.

* * *

But the new militants who took over the Golden Temple represent the Sikh masses and particularly the Dalits who are the true representatives of Punjab."

* * *

Those who read newspapers know that the article in question has direct reference to the event of the time, *i.e.* the Golden Temple at Amritsar, the holiest of the Sikh shrines, having come in the possession of a band of followers of the Bhindranwale cult and their hoisting the Khalistan flag atop. But can we as judges take notice of these events when it stands objected to? I know that in order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation. This rule has been well enunciated in *R.K. Dalmia vs. S.R. Tendolkar*, AIR 1958 SC 538, and *Mohd. Hanif Quareshi vs. State of Bihar*, AIR 1958 SC 731. Though truly in this petition we are not required to go into the constitutionality of the Act, even then the other salutary principles enunciated in the aforesaid cases focus that the Courts must presume that the Legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience. The objects and reasons read out to us reveal the background which led to the passing of the Act, and its provisions must necessarily be viewed to overcome the mischief it sought to remove. The article in question

must thus be read and understood as would ordinary newspaper readers understand and be seen whether it *prima facie* rubs against the provisions of the Act.

8. I am tempted to quote *in extenso* observations of Lord Denning in his Book 'The Closing Chapter' in relation to the Sikh Boy's Turban case, when his decision in the Court of Appeal was reversed by the House of Lords. He says at pages 82-85:

"I am tempted to suggest that if they do not read the newspapers, they must be sitting in any ivory tower. To my mind, that is not the right place for a Judge to sit. There is one sentence in the Judgement of Lord Fraser of Tullybelton in the House of Lords which shows that their Lordships do read the newspapers. In analysing the meaning of the words 'ethnic group', he referred to the dictionary definitions and rejected all of them. He said in (1983) 2 WLR 620, 625:

'...in seeking for the true meaning of 'ethnic' in the statute, we are not tied to the precise definition in any dictionary. The value of the 1972 definition is, in my view, that it shows that ethnic has come to be commonly used in a sense appreciably wider than the strictly racial or biological.'

And then he made this illuminating comment:

'That appears to me to be consistent with the ordinary experience of those who read newspapers at the present day. In my opinion, the word 'ethnic' still retains a racial flavour but it is used nowadays in an extended sense to include other characteristics which may be commonly thought of as being associated with common racial origin.' Now, reading that paragraph, it seems to me that the House of Lords were being guided by what they thought was the 'ordinary experience of those who read newspapers at the present day.' I ask myself: How are the Lords themselves to find out what is the view taken by 'those who read newspapers'? They must be putting themselves into the same position as newspaper readers. In some branches of the law we look for the meaning of the ordinary 'reasonable man'. Here the Lords are looking for the meaning given by the 'ordinary newspaper reader'. I should have thought that, on reading the criticisms of our decision, most newspaper readers would have said: 'The Court of Appeal were quite wrong. The Lords ought to reverse their decision.' Not that I doubt the wisdom of Judges reading the newspapers. I think they ought to read them, so as to keep in touch with public opinion. The law ought to accord with the right public opinion of today, and not be against it. Otherwise, it will not be held in respect."

9. I think the illuminating words of Lord Denning sum up the expectations of our people and their elected representatives sitting

in the Parliament through whom they legislate. They hopefully look forward to the Court to give an interpretation which is in accord with the right public opinion of the day and not against it so that respect for law and justice is maintained.

10. It was next contended by S. Ajmer Singh that the effort to prosecute the petitioner was violative of Art. 19 (1) (a) of the Constitution which guaranteed freedom of speech and expression. He contended that in today's free world, freedom of press is the heart of social and political intercourse. Reliance was placed on *Indian Express Newspapers (Bombay) Private Ltd. vs. Union of India*, AIR 1986 SC 515. It has been noted therein that the press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world and that the purpose of the press is to advance public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgements. So far as it goes it is constructive. But if in the name of freedom, licence is assumed by the press to run across public interest, then the freedom guaranteed stands abused. This argument to my mind does not advance the case of the petitioner on just his supposed freedom.

11. Now the stage is set to have a sceptical look at the definitions of the expressions 'disruptive activity' and 'terrorist act' in S. 2(c) and (f) respectively as also the provisions of Ss. 3 and 4 which are quoted hereafter:

"2(c) 'disruptive activity' has the meaning assigned to it in S. 4, and the expression 'disruptionist' shall be construed accordingly;"

"2(f) 'terrorist act' has the meaning assigned to it in sub-sec.(1) of S. 3 and the expression 'terrorist' shall be construed accordingly."

"3(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause,

or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall –

(i) If such act has resulted in the death of any person, be punishable with death;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to terms of life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.”

“(4)(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

(2) For the purposes of sub-sec. (1) ‘disruptive activity’ means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, –

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation: For the purposes of this sub-section,–

(a) ‘cession’ includes the admission of any claim of any foreign country to any part of India, and

(b) ‘secession’ includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-sec. (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which –

- (a) advocates, advises, suggests or incites; or
- (b) predicts, prophesies or pronounces or otherwise expresses in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any persons bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section."

12. These provisions require thus no interpretation except a cool grasp of their intendment. It only requires to be seen whether the article in question advocates, advises or incites the commission of a terrorist act or any act preparatory to it, or the commission of a disruptive activity or any act preparatory to it. A bare reading of the article and in particular the passages above extracted would show that whosoever is responsible for its publication has committed offences under Ss. 3 and 4 of the Act.

13. The article attributed to the petitioner intends to eulogise Bhindranwale and extoll the role of the band of men who, pursuing his cult, occupied the Golden Temple by force and hoisted the flag of Khalistan. In this way, 'cession' and 'secession' is hailed. Further, the article suggests to the Sikhs to treat the forcible occupiers of the Golden Temple as their true representatives and to prepare themselves for the attainment of Khalistan. Again cession and secession is propagated. It carries oblique references to the virtues of the cult of violence and alienates one section of people from another. It adversely affects the harmony amongst different sections of the people. And to achieve these objectives, violence is indirectly propagated attaining of laughter at the costs of others weeping. The article has also hailed the feat of Beant Singh, the killer of the Prime Minister of India, Mrs. Indira Gandhi, and has termed that act which has avenged the insult to the Sikhs. The article plainly is a blended conglomeration of a variety of suggestive sinister thoughts coverable under the expressions 'terrorist act' and 'disruptive activity' as known to the Act. An ordinary newspaper reading man would read the article only in such a manner and that is what is expected of us as Judges. Instantly, no intellectual exercise is needed or to hair-split, or shatter and explain away the context or its contents. No scepticism need enter our minds to laughingly say that no sensible man could have taken the article seriously. It has to be viewed on the basis of common sense. Thus, I am constrained to hold that the language and tenor of the article is not innocent and cannot be lightly taken. Thus I am of the confirmed view, as at presently advised, that the article undoubtedly advocates, advises or incites the commission of terrorist

acts or acts preparatory to terrorist acts punishable under S. 3(3) of the Act and disruptive activities or acts preparatory to disruptive activities falling within the ambit of S. 4(2) of the Act, if not more. It is true that the article does not directly exhort its readers to do anything but the style of writing is positively suggestive recommending action on the path chosen by Bhindranwale and his followers.

14. Now who was Bhindranwale and for what he stood for his available in the Government of India's White Paper on the Punjab Agitation. There are excerpts from his statements as translated from tape-recorded speeches transcribed from cassettes and statements made to Press. A few of them are:

"It comes to 35 and not even 100. Divide 66 crores, then each Sikh gets only 35 Hindus, not even 36th. How do you say you are weak?"

* * *

"I had earlier directed that each village should raise a team of three youth with one revolver each and a motorcycle. In how many villages has this been done?"

* * *

"Those of you who want to become extremists should raise their hands. Those of you who believe that they are the Sikhs of the Guru should raise their hands, others should hang their heads like goats."

* * *

"Frankly I don't think that Sikhs can either live in or with India."

* * *

"A Sikh without arms is naked, a lamb led to slaughter. Buy motorcycles, guns and repay the traitors in the same coin."

* * *

15. What the White Paper describes can judicially be taken note of on which there can be no two opinions. The chain of events were thus self-speaking. No formal evidence in that regard was necessary to be gathered by the investigation. Neither can the Court knowingly assume ignorance.

16. In ordinary cases, the Court has power to grant bail in case of a non-bailable offence under S. 437, Criminal Procedure Code, and the High Court and Court of Session have special powers under S. 439, Criminal Procedure Code. The power under the Code has by

means of S. 17(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 been regulated in the negative by providing as follows:

“Notwithstanding anything contained in the Code no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless —

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

17. It is plain from the language of the above provision that the Court must adopt a negative attitude towards bail but turn it positive firstly if it is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and secondly that he is not likely to commit any offence while on bail. Both these tests must be satisfied before bail can be granted. Bail is at the most a matter of procedural privilege and not accrued right until it is granted. The Act as a legislative measure was passed in the circumstances which were compelling as the objects and reasons read to us *in extenso* disclose. Its life is for a period of two years from the date of its enforcement in accordance with S. 1(3). It is a temporary measure taken when the integrity, unity and peace of the country was at stake. The Parliament in its wisdom considered such an emergent legislation necessary when the nation was in peril. While interpreting its provision and carrying out its intendment, the words of Lord Macmillan in (1942) AC 206 are a pointer:

“But in a time of emergency, when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the Courts would be slow to attribute to a peace-time measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace-time as well as in war time.”

The disorders which necessitated this legislation into being were the terrorist acts and disruptive activities of some and the Act is a measure to cope with them. The power of the Court to grant bail has advisedly been regulated in place of that conferred by the Code of Criminal Procedure so as to promote and not defeat the efficacy of the legislation. Therefore, it is right for the Court to interpret the bail provisions in such a way. On such interpretation, it cannot be said at this stage that there are reasonable grounds for believing that the petitioner is not guilty of such an offence and further while on bail he was not likely to commit any offence.

18. Thus, for the views afore-expressed, I decline bail to the petitioner.

DEWAN, J. (Majority view): 19. I agree with the view taken by my learned brother M.M. Punchhi, J.

D.S. TEWATIA, J. (Minority view): 20. I have perused the opinion prepared by my learned brother Punchhi, J. With respect, I have not been able to persuade myself to subscribe to the view he has projected and, therefore, the necessity of dictating a separate opinion of my own.

21. It is unnecessary to burden this opinion with the facts of the case, because these have been in detail recapitulated by my brother Punchhi, J. It would suffice to mention that the petitioner Sukhdev Singh has claimed himself to be the owner and consultant editor of political weekly 'Dignity', of which the ostensible printer, publisher and editor is one Shri D.S. Gill, Advocate of Ludhiana. In its issue of March 2-15, 1986, 'Dignity' reprinted an article 'A Dalit View of Punjab Scenario' authored by one V.T. Rajshekar, which he had earlier published as an editor in his own fortnightly paper 'Dalit Voice' of February 16-22, 1986, at Bangalore. Chandigarh police registered F.I.R. No. 122, dated 12-3-1986, against the petitioner, V.T. Raj Shekar and D.S. Gill under sections 124-A and 153-A, I.P.C. and under S. 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, hereinafter referred to as 'the Act'. The petitioner was arrested by Chandigarh police on 12-3-1986.

22. The petitioner sought bail from the Presiding Officer, Designated Court, Chandigarh, who declined the same by his order dated 15-3-1986.

23. As before him, so also before us, the prosecution resisted the granting of bail to the petitioner on account of the commission by the petitioner of the alleged offence under Ss. 3 and 4 of the Act and, therefore, this Court too is to consider as to whether the petitioner has made out a case for the granting of bail, in view of the provisions

of Ss. 3 and 4 of the Act read with S. 17 thereof, which provides the circumstances in which this Court could grant bail to an accused charged with the commission of offences under the Act.

24. Before proceeding to consider the rival contentions advanced at the Bar, it would be appropriate to notice the expressions 'disruptive activity' and 'terrorist act' as defined in S. 2(c) and (f) of the Act, as also the provisions of Ss. 3 and 4 thereof, which are in the following words:

"2(c) 'disruptive activity' has the meaning assigned to it in S. 4, and the expression 'disruptionist' shall be construed accordingly;

* * *

(f) 'terrorist act' has the meaning assigned to it in sub-sec. (1) of S. 3 and the expression 'terrorist' shall be construed accordingly:

* * *

3(1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamic or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall –

(i) if such act has resulted in the death of any person, be punishable with death:

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

4(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission

or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall –

(i) If such act has resulted in the death of any person, be punishable with death;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to terms of life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.”

“(4)(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

(2) For the purposes of sub-sec. (1) ‘disruptive activity’ means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, –

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation: For the purposes of this sub-section,–

(a) ‘cession’ includes the admission of any claim of any foreign country to any part of India, and

(b) ‘secession’ includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-sec. (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which –

we are in confusion. The upper caste Hindus rule only by confusing others. That is how they once again reduced Punjab to a bundle of confusion. So whenever there is any confusion like this Babasaheb comes to our rescue.

Right now in Punjab the Hindus, meaning the upper caste, are very much worried over 'extremists' capturing the Golden Temple of Amritsar. They are finding fault with Chief Minister Barnala for yielding to the 'terrorist pressure' and 'appeasing the anti-nationals'. They are also furious that the 'extremists' are going ahead with the demolition of Akal Takht rebuilt by them at an estimated cost of Rs. 50 crores.

Volte face by Hindus

That means, these Hindus, who used to hate Barnala, Tohra, Badal and others have suddenly started loving them and want the pro-Bhindranwale 'extremists', who took over the Golden Temple, to be liquidated. So we know whom the Hindus love and whom they hate. Since they make no secret of their love or hate, it is equally easy for the persecuted minorities of India to come to the right decision at such crucial moments. This is called the laws of contradictions. (Selected Works of Mao Tse-Tung, 1952, Vol. I, Peoples Publishing House, Beijing).

A proper study of these laws that govern every society is a must for all Dalits and persecuted nationalities. Guided by the thoughts of Babasaheb and Mao, we come to certain conclusions and that is how we have been proved right in saying that the All India Sikh Students Federation has become the representative organisation of the Sikhs, and that the Akali Dal (L) and the S.G.P.C. have lost the confidence of the people. Barnala had the police under him and Tohra had the vast S.G.P.C. funds plus the armed guards, but neither could stop the militants, committed Bhindranwale boys from taking over the Golden Temple.

Why? Because the Sikh masses are behind Bhindranwale who today reigns supreme over Punjab. In other words, the 'elected' Akali Government, S.G.P.C., the high priests and the low priests have lost the support of the people as they became puppets of the Hindus. That is why the Hindus are beating their breasts over the fall of their stooges.

Sikh religion tells a Sikh to fight and die, never to surrender. Longowal, Badal, Tohra, Zail Singh not only did not fight but surrendered and compromised with the 'enemy'. Hence they must go. No tears be shed over this. All these high priests and low priests

were responsible for compromising with Brahminism making Sikhism, a military religion, part of Hinduism.

Sikh-Dalits Bhai Bhai

As a consequence, Sikhism distanced itself from the Dalits for whose liberation Sikhism was founded. It was Bhindranwale who stirred up this stinking Sikh pond and Beant Singh, a Dalit Sikh, who avenged the humiliation to Dalit Sikh, who avenged the humiliation to Sikhs. It was Bimal Khalsa, a Ramdasia Sikh and the widow of Beant Singh, who led the canal construction blockade. They say it is these three people who restored the lost self-respect of the Sikhs. Not Longowal, not Barnala, not Tohra, not any high priest. One Bhindranwale may be dead, but hundreds of Bhindranwale are born out of his blood.

What is going on in Punjab today is a welcome, long overdue clash between internal contradictions. Without resolving the internal contradictions, we cannot resolve the external contradictions. 'The fundamental cause of the development of a thing is not external but internal. Contradictions within a thing is the fundamental cause of its development. Social development is due chiefly not to external but internal cause.'

So as per the laws of contradictions, Sikhs have more deadly enemies inside their own house. And the A.I.S.S.F. and the Damdami Taksal of Bhindranwale have, therefore, rightly identified these internal enemies and ousted them. Congratulations. So much so the Dalit Sikhs have started coming closer to the Jat Sikhs and, in fact, leading the Sikh nation under Bimal Khalsa because the priority is given to throw out the internal enemies.

It will now become easier to fight the external enemies once the internal enemies are eliminated. The experiment being conducted within the Sikh society is a lesson to the Dalits and all other persecuted nationalities. If the Muslims are weak today despite forming about 15 per cent of the population, it is because of the enemy within.

As no society can escape being governed by these laws of contradictions, Barnala, Tohra and Co. will be its first casualty. Zail Singh and Buta Singh, the two running dogs of the Centre, have been rightly shown their place. We really feel sorry for their plight. They are hated by the Hindus as well as by the Sikhs. Zail Singh missed two historic opportunities to recover his lost respect and restore the Sikh glory. As the Commander-in-Chief of the Armed Forces, he could have refused to give his consent to send the Army into the Golden Temple; and later when the Army entered it, he could have

resigned as the President. But he compromised and decided to be a stooge. We have no sympathy for worms.

The Sikh 'worms'

Buta Singh may be a Dalit. So what is the use of living without self-respect? It is better to die young like Bhindranwale, fighting, rather than live the life of a donkey for hundred years without self-respect. That is why we often say that Dalits and other persecuted nationalities must learn how to die. Our liberation is assured the moment we learn how to die. It is true we hate the upper caste but that is no use. Because we do not know how to oust them. We will not know it until we learn the art of dying.

Barnala had an opportunity to enter the Sikh hearts. He could have resigned on January 26, when Chandigarh was scheduled to be transferred to Punjab as per the 'Rajiv Gandhi-Longowal Accord'. To him his chair became more important than his conscience. He shivered under the Hindu threats and sent his own son to fight Bhindranwale boys in Amritsar. The son met with a road accident and the father with a political accident. Today the situation in Punjab is worse than that of June, 1984. Small people have small minds. Barnala, Tobra, Badal proved to be small people. And Sikhs who think big and act big have rightly kicked out the small people.

The upper caste Hindus are never tired of lecturing on the 'unity and integrity' of India. If they really love the country, they would not have behaved like this. Enough literature produced by their people has come to prove how brutally they were on Sikhs. So much so, they are 'giving' 'Khalistan' to Sikhs on a golden plate. Sikhs say they don't want 'Khalistan' but it is these Hindu-Nazis, Arya-Smajists, Nirankaris and Durankaris, who are begging the unwilling Sikhs to take 'Khalistan'. Till now the Sikhs resisted all such temptations. But going by today's mood of Sikhs, they will take it — come what may.

If and when it happens who will be responsible for forming 'Khalistan'? On our part, we have always opposed 'Khalistan'. We sufferers are not interested in parting with the Sikhs whose presence in India as co-sufferers is very essential for us. The cause of the Dalits and O.B.Cs. has suffered because of the formation of Pakistan. It will suffer a further set back if the Sikhs also go with 'Khalistan'. These upper caste exploiters, the 5 per cent Aryan invaders have no love for the country and that is why they are bent upon vivisectioning it. But can we allow it?

Will Sunderji Oblige Again?

They sent their Army led by a Madrasi Brahmin, Sunderji, and

destroyed the Golden Temple in 1984. When it was destroyed they rejoiced, danced with joy and distributed sweets. These very people repeated their rejoicing when the Hindu 'army' rebuilt the Golden Temple. They were happy when it was destroyed, they were more happy when it was rebuilt.

What type of a kill-joy they must be. Akal Takht was destroyed many times before but every time it was rebuilt brick by brick by Sikhs themselves. Why did the Hindu mafias go to rebuild it spending Government money? Don't they know that such an action is an insult to Sikh conscience? So when the Sarkar Seva built Akal Takht is being pulled down, why are they weeping now? Well, when the Hindus weep we must laugh and when they laugh we must weep. Whatever it is, the decision to destroy the Akal Takht is a slap on the face of the Hindu-Nazis. And we are afraid they may have to call Sunderji again. And if ever the heartless Hindus were to repeat the history, it is the sure birth of 'Khalistan'. Whatever may be the Hindu-Nazi pressure on Rajiv Gandhi, we hope he will not become a party to the vivisection of India. May be he is being threatened with the Congress losing in Haryana, which has an unscrupulous Hindu as its Chief Minister. He may form a new party to save Haryana for its upper caste.

Dark forces are at work in Delhi trying to confuse Rajiv. He was magnanimous enough to hand over Punjab to Akalis which is a Kulak party of Sikh landlords. But the new militants who took over the Golden Temple represent the Sikh masses and particularly the Dalits who are the true representatives of Punjab.

All minorities in ferment:

He should not think that it is not merely the Sikhs who are in ferment. The Muslims, Christians, Delhi tribes, O.B.Cs. are equally disturbed. Because they have realised that Brahminism is threatening every nationality. So when a nationality is threatened it is bound to hit back. This is called the sharpening of the contradictions. It is a healthy sign. And no nation has sharpened the contradictions as much as the Sikhs – though they form just 2 per cent of the population. We don't know what is wrong with Muslims who form 15 per cent. Dalits 20 per cent, and Tribals 10 per cent and Christians 2.5 per cent. Why don't they learn from Sikhs: how to die?"

Counsel for the petitioner has advanced two-fold submission: (1) that the petitioner, not being either editor, printer or publisher of the paper in question, cannot be charged with any offence arising from the publication of the given article in the paper, and (2) that the contents of the alleged offending article do not constitute any offence under Ss. 3 and 4 of the Act.

25. Taking the second submission first, it may first be observed that the author of the article Shri V.T. Rajshekar, in substance, has projected the view that the upper caste Hindus, according to Dr. Ambedkar rule by confusing others. To correctly assess the situation, Dalits have only to see what the upper caste Hindus love or hate. 'You love those whom they hate and hate those whom they love' — apply this formula to the situation in Punjab. Upper caste Hindus hate Bhindranwale and his committed boys, Dalits should, therefore, love them. Sikh religion was created to rescue Dalit classes (scheduled castes and backward classes) from oppression from upper class Hindus. The cause of Dalit and of Sikhs and other oppressed minorities is one and the same. It is Bhindranwale and his boys, who truly represent Sikh masses and not Barnala, Tohra and Badal. It is Beant Singh and his wife Bimal Khalsa who represent Dalits among the Sikhs and not Giani Zail Singh and Buta Singh. Upper caste Hindus are out to vivisect India. Dalits are against creation of 'Khalistan', because as a result thereof Dalits would suffer. Upper caste Hindus are giving 'Khalistan' to Sikhs on a golden plate, although Sikhs say they do not want 'Khalistan', but it is Hindu-Nazis or the Arya Samajis, Nirankaris or Durankaris who are begging unwilling Sikhs to take 'Khalistan'. The Sikhs till now have resisted all such temptations, but going by today's mood of Sikhs, they will take it — come what may. The Dalits on their part have always opposed 'Khalistan'. They being sufferers are not interested in parting with Sikhs, whose presence in India as co-sufferers is very essential for them. Just as the cause of Dalits and other backward classes had suffered as a result of formation of Pakistan, similar would be the position if Sikhs succeed in getting 'Khalistan'. The upper caste Hindus, the 5 per cent Aryan invaders have no love for the country and that is why they are bent upon vivisectioning the country. If another operation 'Blue Star' is executed, it would herald birth of 'Khalistan'. Dalits hope that Rajiv Gandhi would not become a party to the vivisection of India. Dark forces are at work trying to confuse him. He was magnanimous enough to hand over Punjab to Akalis which was a Kulaks party of Sikhs landlords, but it is the militants who took over the Golden Temple who represent the Sikh masses and particularly the Dalits who are the true representatives of Punjab. Dalit and other oppressed minorities can save themselves only if they are prepared to die for their rights.

26. The Presiding Officer of the Designated Court came to the conclusion that the article did not fall within the definition of 'disruptive activity' as given in Cls. (i) and (ii) of sub-sec. (20) of S.4 of the Act. However, according to him, the article came within the ambit of sub-sec. (3) of S. 4.

27. Before us, Mr. Anand Swaroop, learned counsel for the respondent, contended that the article constituted an offence under sub-sec. (3) of S. 3 and sub-sec. (2) of S. 4 of the Act, which submission has found favour with my learned brother Punchhi, J.

28. The article, as I view it, however, does not constitute any offence whatsoever either under the provisions of S. 3(3) or that of S. 4(2) of the Act.

29. The contents of the article do not show that the author had conspired to commit a terrorist act or any act preparatory to a terrorist act or that he attempted to commit a terrorist act or any act preparatory to a terrorist act or that he advocated or abetted or advised or incited or knowingly facilitated the commission of a terrorist act or any act preparatory to terrorist act, as defined in sub-sec. (1) of S. 3.

30. It was, however, argued on behalf of the prosecution that from the factum of eulogising of Bhindranwale and Beant Singh, it must be inferred that the petitioner had advocated the commission of terrorist act.

31. This, in my opinion, would be allowing the imagination to run riot.

32. The author of the article in question neither questioned the sovereignty and territorial integrity of India nor had sought to disrupt or had intended to disrupt either directly or indirectly the sovereignty or territorial integrity of India. On the other hand, the author had advocated the integrity of India and had cautioned that the Prime Minister be beware of the machination of the upper caste Hindus, who are bent upon the vivisection of the country. The author has said that Dalits are against creation of 'Khalistan', because Dalits would suffer greatly if that happens.

33. The author of the article in question had not suggested any action whether by act or by speech or through any other media or in any other manner which intended to bring about the cession of any part of India from the Union or supported any claim, whether directly or indirectly, for the cession of any part of India.

34. Mr. Anand Swaroop, senior-advocate, the learned counsel for the State, argued that by using expressions like "Till now the Sikhs resisted all such temptations. But going by today's mood of Sikhs, they will take it — come what may" and "And we are afraid they may have to call Sunderji again. And if ever the heartless Hindus were to repeat the history, it is the sure birth of 'Khalistan', the author had predicted the formation of 'Khalistan'."

35. Even if it is so, predicting the formation of 'Khalistan' is not

covered by the provisions of sub-sec. (2) of S. 4. The legislature was aware of the meaning of the words 'predict' and 'prophecy' and wanted that no person should predict or prophesy the prohibited thing, it has expressly said so, as it had done by providing so under sub-sec. (3) of S. 4. The absence of these words from sub-sec. (2) of S. 4 is meaningful.

For the reasons aforementioned, I hold that the article in question does not constitute any offence as claimed by the prosecution.

36. Once it is held that the petitioner has not committed any offence in terms of Ss. 3 and 4 of the Act, then his case for granting of bail does not fall within the purview of the provisions of sub-sec. (5) of S. 17 of the Act.

37. As already observed, learned counsel for the respondent, had not argued either before the Court below or before us that the article in question constituted an offence under Ss. 124-A and 153-A of the I.P.C.

38. In any case, the contents of the article in question do not constitute sedition that is an offence under S. 124-A, I.P.C. because the author had not said anything that could bring into hatred or contempt the Government established by law in India. Nor he had tried to incite or attempt to incite disaffection towards the Government of India.

39. So far as offence under S. 153-A, I.P.C. is concerned, assuming for the sake of argument that the article constitutes such an offence, then too the petitioner deserves to be enlarged on bail, when regard is had to the fact that the Additional Sessions Judge, Shri M.K. Bansal, had granted anticipatory bail to the petitioner for offences under Ss. 153-A and 120-B, I.P.C. regarding which F.I.R. was registered against him on 14-3-1986.

40. For the reasons aforementioned, the petitioner is enlarged on bail on his executing a personal bond in the sum of Rs. 5,000 (Rs. Five Thousand only) to the satisfaction of the Chief Judicial Magistrate, Chandigarh.

ORDER OF THE COURT

41. In view of the majority judgment, the bail is declined to the petitioner.

Order accordingly.

Appendix-21

Pressures on Giani Zail Singh to Resign

Brickbats, bouquets

The receipt section in Rashtrapati Bhawan had a unique experience — a flood of telegrams addressed to the President of India. Rashtrapati Bhawan officials found themselves at a loss in dealing with the innumerable telegrams and letters pouring in. Finally, an officer was asked to “deal” with them.

The tone and tenor of the telegrams which President Zail Singh received from all over the world reflected the anger and anxiety of the Sikh community. Rarely had a President received such communications.

A somewhat similar situation had been faced by President Neelam Sanjiva Reddy in 1979 when he decided to dissolve Parliament without giving a chance to Jagjivan Ram to form a ministry. Then, the harshest of the comments came from Janata president Chandra Shekhar who described Reddy as a “lilliputian fuehrer”.

Here are some samples of the telegrams Zail Singh received:

Historically Sikhs suffered through worst tyranny. You will be rewarded like Massa Ranghar and Zakaria Khan. We are ready to face extreme of your worst Sikhs. Abroad will follow the chain of martyrs to uphold the Azad Panthak dignity. Now you will be helpless to keep Sikhs under your yoke. We declare sovereign and independent nation.

Babbar Khalsa, Toronto

(Massa Ranghar was appointed to administer Amritsar after beheading Bhai Mansingh, chief priest of the Golden Temple in 1750. Ranghar did not show any respect to the religion. He used to smoke inside the Golden Temple and was also a womaniser. Two Sikh youths beheaded him in the temple complex. Zakaria Khan was the governor of Punjab and he ordered the worst ever repression of Sikhs. The repression did not succeed and ultimately he had to sue for peace.)

Here is your name – Lala Zail Chand. (Lalas are the trading community among Hindus)

Dharma Kaur Khalsa, Baltimore.

Jammu and Kashmir Sikhs respectfully request you to step down after the tragedy that has been enacted in Golden Temple, Amritsar and request all Sikhs to resign from Congress and give a proof of their solidarity with Sikh Panth.

Daljit Singh on behalf of all party Sikh Convention, Jammu

Act of violence, Ashamed of your being a Sikh. Resign if you have any conscience.

Sikhs of Metro Atlanta, Georgia, USA.

After the massacre innocent Sikhs and outrageous sacrilege of Darbar Sahib, pray you resign as president of India

Sikh Culture Centre, Calcutta

Sikhs of Hawaii appeal to you to resign.

Sikh Association of Hawaii

Stop killing of Sikhs in Punjab or resign.

Sikh Cultural Society, Metropolitan, Windsor (UK)

However, there were telegrams requesting the President not to resign.

Wahe Guruji ka Khalsa, wahe Guruji ki fateh. Prayers of my sangat are with you in this time of trouble. Maintain your position. Sikhs need you as president. Keep faith. That guru will carry you through.

Sat Jivan Singh, Khalsa Sikh Dharma, UK

Sat Nam. God bless you. May guru have mercy on this planet. Use your power of prayer. Use your office to bring peace. Do not resign.

Shati Parwaha Kaur Khalsa, Los Angeles

All things come from God. Don't resign.

Dukh Niwaran Kaur Khalsa, Whip, Apton

Incidentally, nearly all the telegrams were from outside Punjab. This was because communication channels were cut off in the state for some days after the action in Amritsar.

Appendix-22

Giani Zail Singh's Broadcast to the Nation on 17 June, 1984

Today, I am addressing you at such a distressing moment when my heart, as also of all right thinking persons, is heavy with the deep wounds of the past happenings. It is but natural for every thinking being to feel this way over such events. But, we have a responsibility. Before we are swayed by emotions, we should go into the background of these events, look at the present and reflect on the future.

In the recent past, the situation inside the Gurdwaras of Punjab, especially the holiest of Sikh religious places – The Golden Temple and The Akal Takht – so developed that even the elected Management Committee of the Gurdwaras could exercise no control. Under these circumstances, despite repeated appeals, all that was against the teachings of the Gurus took place in these holy places with impunity. Even the appeals of the Gurdwara Management were ignored. With the result, the Gurdwaras, which were for our spiritual upliftment, for inculcating the teachings of Guru Nanak as enshrined in his supreme and universal Bani and, as ordained by Guru Gobind Singh, for imbibing the message contained in Guru Granth Sahib and were also for the devotees to visit, passed to the hands of a few terrorists. All types of dangerous weapons and such other things which were contrary to religious traditions, were collected at these places, and even used, ultimately making it difficult for the devotees to visit Gurdwaras.

In this context, I cannot absolve those in control of Punjab Administration of their responsibility in the matter. The situation continued to deteriorate because of their laxity and carelessness. The responsibility is also of the terrorists, as also of those who encouraged the terrorists while wanting to harm India. The situation in Punjab provided them with an opportunity to seek to divide our country and break our age-old bonds by violating the sanctity of our holy places. Getting inspiration from these powers, some young men and women and even some elder persons took to the wrong path. And the path led to the murder of many Hindus and Sikhs – businessmen, farmers,

journalists, politicians and religious leaders. Even the former Jathedar of the Akal Takht, Singh Sahib Giani Pratap Singh, was not spared. As is well known, he was a great man of our country – a known scholar, writer, preacher and a selfless being. It is likely that he did not share the views of those who had occupied the Gurdwaras through improper means. He too was murdered though he was 85, when he was resting at home. Such heart-rending happenings escalated. I do not want to dwell on them in detail; but I would say that many appeals were made to stop them. So far as I am personally concerned, I had been trying, at times even by going out of the way, to put an end to them while maintaining the dignity of the President's office; but these happenings continued.

Two religio-political leaders, when compelled, let themselves be arrested. Similarly, when the Security Forces issued an appeal, the terrorists should also have come outside the Gurdwaras to preserve the sanctity of the Gurdwaras. It would have been better had they offered themselves for arrest and demanded that they be put on trial. But, it is not proper to conduct an armed fight by taking the shelter of Gurdwaras and the holy Akal Takht Sahib. This has pained every right thinking person, especially those who have faith in Guru Maharaj and those Sikhs who know their traditions fully well.

We know during the days of the country's slavery, many had to lay down their lives to rid the Gurdwaras of the Mahants and their misdeeds. At that time, the Government of the day was supporting them. That was why, the Sikhs had to make many sacrifices. The Shiromani Gurdwara Prabhandak Committee was formed with a view to preserving the sanctity of the Gurdwaras, to see that Gurbani was preached and the Gurdwaras were managed in keeping with the pious teachings of the Gurus. In the Guru Granth is written:

At the Guru's Door one hears the Lord's Praise;
 Yes, Meeting with the True Guru, one utters the
 Lord's Praise with tongue,
 And one is rid of one's Woes and Afflictions, and the
 Lord Blesses one with Glory in His Court.
 All that seems is thou, O God
 And All that we hear is thy speed
 Yea, there is no place where thou art not, and
 it is thou who upholdest all.

and Gurdwaras are those places:

**Kabiri Seek Thou the Door that is ever open
unto thee, And, leave not that Door ever:
yea, cling to it tenaciously.**

The Golden Temple materialised, as conceived by the Fifth Guru. Later on, the beautification of its structure continued. It became "Swarn Mandir". The Akal Takht was founded by the Guru, who kept his residence at Chehhartha Sahib, about 7 miles away, to establish the supreme traditions of the Takht. But those traditions were shattered and the condition became such that:

**Such intense is our suffering, O Lord, and
Thou feelest no pain.
If the powerful duel with the powerful I grieve not.
But if the ravenous lion falls upon a flock of
sheep then the Master must answer.**

Guru Nanak Dev Ji had so said in his pious Bani.

I have given deep thought to it. When no other alternative was left, then the Punjab Government had to send the Security Forces. On reaching there, the Security Forces made an appeal. Acting on that appeal, two Sikh leaders offered themselves for arrest. Many others also courted arrest. Many devotees, who were in the temple, left feeling that they had nothing to do with that fight.

I don't want to repeat, but unfortunate events transpired. How the building of Sri Akal Takht suffered damage or how the damage to the main Golden Temple building was avoided, even at the cost of Security Forces' jawans and many others sacrificing their lives — these will be probed into later. But the tragedy of those who lost their lives has left an indelible mark on my heart. These happenings could have been stymied but this could not be because the terrorists had taken over the complex premises. It is also being investigated, as told by our Generals, how these terrorists had acquired such dangerous and foreign weapons and what hand the foreign powers had in this. All this testifies to there being a deep rooted conspiracy. Now, the question is how to heal these wounds and how to face the facts? This is the duty of both the government and the society as a whole. We should recall the martyrdom of Guru Teg Bahadur and his pledge to protect those who had come to seek his help for the

protection of religion :

**Guru Teg Bahadur who protected the frontal
marks and sacrificial threads of the Hindus
And displayed great bravery in the Kali age.**

When he set off, all his devotees, in particular Saifuddin, did not allow Guru Sahib to move on for more than a month. They said, "You are going to Delhi. If you reach there, you will be beheaded." Guru Teg Bahadur replied, "No, I would like to be beheaded. I would go to my killers, but I would not hide in the holy Guru Astan. I would also not seek refuge in the house of a friend. I would not deceive anybody because:

**Whomsoever we give our hand
May we lose our life but must not leave his hand.**

Today, I feel very sorry that some people have appealed that Sikhs in Government positions, especially in the Army, should give up their offices. Does religion sanction this? Religion, in other words, means duty. Once, one has taken an oath of duty in the name of the Guru and does not abide by it, it is nothing short of cowardice and being led astray. Therefore, I am thankful to those who performed their duties honestly and loyally. I know fully well that my government has not acted with the intention of vanquishing anyone or ensuring the victory of another — when adopting its course of action. My government is above the issues of victory or defeat. The real issue is how to heal the wounds? It had been quite sometime since when these wounds have been there. Who was responsible for that? Only history will tell or investigations will reveal. I don't want to refer to these. But, with deep anguish I mention that I have been to Punjab that Punjab which once smiled, played, walked, danced and sang, which was vibrant and prosperous because of its tradition of hard work — that Punjab was now closed in houses. Why did this happen? It is necessary to examine this in depth.

Common Bonds

Countrymen, the Hindus and Sikhs have a common ancestry, they are products of the same environment and milieu, they have wept and smiled together. But the time came when one community wept and the other smiled. This had never transpired before. I want that they should now again share their joys and sorrows.

We should serve our motherland. We, the inhabitants of this country, are the progeny of this motherland. It is our duty to ensure that our mother does not face any trouble. All our religions have been nurtured in the lap of this Bharat Mata. Our country has holy places, saints and seers, the brave one, scientists and servicemen and labourers and farmers. It is our bounden duty to share the sorrows of all these sections of society. I feel and also appeal to everybody that we should now foster unity. We should talk of peace; not talk but also constitute committees which should help improve the atmosphere. In this way, we can forge unity once again. There is no harm in seeking pardon for mistakes one may have committed.

There is need for us now to pay attention to rendering voluntary service in the holy place. And, I hope that not only the Sikhs but other devotees having faith in their own religions and having respect for all religions, will also volunteer for *Kar Seva* there. It is my desire that we undertake the *Kar Seva* of the holy Sarovar also, and share the religious fervour by carrying baskets on our heads. In this way, the wave of love and affection, once started by Guru Arjun Dev in the city of Guru Ram Das, will be revived. In this way, we shall restore the glory of that place.

Oneness of Mankind

My beloved countrymen, our great Guru taught us the oneness of mankind, notwithstanding the faith one professes and the way one offers his prayers.

There is need for us to remember the saying of the Tenth Guru. He has said:

Some are accepted as Sanyasis, some are shaven heads, others are Yogis or Brahmacharis, and Jatis. Some are Hindus and others Muslims; among the latter are Rafazis, Imams and Shafis -- know that all human being are one, Karta (the creator) and Karim (the Beneficient) are the same, Razak (the Provider) and Rahim (the Merciful) are the same; let no man even by mistake suppose there is a difference. Worship the one God who is the one divine Guru for all; know that His Form is one, and that He is the one light diffused in all.

I expect, especially from the Sikh religious leaders that they get inspiration from the Bani of the Guru as our tenth Guru has said that "the Guru of the Sikhs after me will be Guru Granth Sahib." In the Guru Granth is enshrined the Bani of all saints like Sheikh Farid, Kabir, Ravidas and Ramanand. I cannot name all of them.

There is need for us to exercise caution so that we do not get astray and I appeal to all my countrymen to recall the pious saying of Guru Granth Sahib.

**Listen all, the truth: hereby proclaim;
Only those practising loving devotion shall attain
God.**

Jai Hind

Appendix-23

Mann's Letters of Protest Against 'Operation Blue Star'

Two Letters to the President of India: Government Policy is to Annihilate Sikhs

Sikhs everywhere feel outraged at the Indian Army's storming of the Golden Temple complex in Amritsar and nearly 74 other gurdwaras in Punjab, 37 of which are historic. To protest against this barbaric act, many Sikhs have returned their awards to the President of India, while others have resigned from their seats in Parliament, State Legislative and other elected bodies. Some upright officers have kicked away their lucrative jobs in the government. One of them is Sardar Simranjit Singh Mann, a distinguished member of Indian Police Service. His last assignment was Group Commandant, Central Industrial Security Force, Bombay. In a letter of resignation to Giani Zail Singh, President of India, he has given vent to his feelings which are shared by millions of Sikhs in the world. The text of his letter No.1 is published hereunder:

Letter No.1*

"Mr. President,

It is difficult to express in words my feelings over the recent events in Punjab, especially the desecration of the holy precincts of the Golden Temple and 37 other historic Gurdwaras in the Punjab by allowing the armed forces to enter these precincts, kill the faithful, and destroy and pillage all that is dear and close to the heart of every Sikh.

* D. O. letter No. CISF/GHB/SSM/84, dt. 18 June, 1984.

The Indian Army, with a strength of four corps (11 corp, 10 corp, 1 corp and 2 corp were deployed), supported by artillery (130 mm artillery guns) and 24 tanks entered the holy precincts of Harmandir Sahib, and the Akal Takhat Sahib was destroyed by 3.7 rocket launchers. Thirty seven other historic Gurdwaras were similarly desecrated.

As a Sikh, you are aware that the gurdwaras are open to all, irrespective of one's caste, creed or religion. The only force, which the Sikhs have never allowed to enter without offering resistance, are the government forces, whether they were the Mughal, Afghan or British.

Baba Deep Singh, the first Jathedar of the Damdami "Taksal" (Order) offered resistance to the troops of Ahmed Shah Abdali when the Golden Temple was blown up by the Afghans and the holy tank desecrated by filling it with carcasses of cows.

Sant Jarnail Singh Bhindranwale, the 14th Jathedar of this very 'Taksal' and a great Sikh missionary, has now laid down his life defending the sanctity of the Golden Temple.

Even during the firing at Jallianwala Bagh, Amritsar, in 1919, the bellicose Lt. Col. Smith favoured bombarding of the town from the air but G.A. Wathan, the Principal of Khalsa College, Amritsar cautioned him against such a drastic step. If anything happened to the Golden Temple, he argued, the British would permanently alienate the Sikhs, from whom the Army drew a large proportion of its soldiers.

I had consistently been cautioning the Indian government against such steps.

What is even more painful is that after murdering the great Sikh national hero, Sant Jarnail Singh Bhindranwale, the Indian Armed Forces placed his body, along with the bodies of Gen. Suhbeg Singh, Bhai Amrik Singh and Baba Thara Singh, in front of the Darshani Deodi and displayed them to the Hindu population which went delirious with joy. The Hindus offered sweets to the Indian Army to celebrate their great victory. It is regrettable that the Indian Army accepted these sweets and thus, further humiliated the Sikh nation.

The Indian Army, after seizing control of the Golden Temple complex murdered several hundred Sikhs whom it had captured (which is against the rules of the Geneva Convention), and looted the Toshakhana. After the mopping up operations were completed, it planted several weapons on the Sikhs to prove that the Sikhs had sophisticated weapons and were making preparations to wage a war on the government of India and hence, realize their dream of an independent and sovereign state.

Pictures show Indian Jawans wearing boots within the holy precincts of the Golden Temple.

You will recall that in 1919 Sir Michael O'Dwyer, the Lt. Governor of the Punjab, while defending Gen. Dyer's action, had put up a similar defence for slaying 2,000 persons at Jallianwala Bagh. He stated that military action was inevitable because the population was rising in revolt as it had done in 1857 and, thus, tried to justify his actions.

Since you are the Supreme Commander of the Armed Forces, it is my duty to inform you that Sikhs with a few weapons, which only a platoon in an infantry battalion has, cannot wage a war against the Government of India. Attacking them with such ferocity has only made our worse fears come true that the Government of India is bent upon committing the genocide of the Sikhs.

Your statement in favour of this wild propaganda of the Government of India has poured salt into the wounds of every Sikh, whether he be in India or abroad.

The Sikhs have been patriotic and faithful to India but the arrogance of the majority community has totally alienated them.

Mrs. Gandhi, your Prime Minister, has by this cruel action outdone Muhammad Ghazni, and she, like Shankaracharya who eliminated the Buddhist faith in India, has by this action achieved a dubious reputation, though, to the Hindus, she has become the greatest Hindu leader since Shankaracharya.

The army action in the Punjab is only a tactical gain, for which Mrs. Gandhi will be given a fresh mandate by the Hindu majority in the forthcoming general elections to Parliament. However, as the President of the country and with your knowledge of Sikh history, and with your military advisers knowledges of Napoleon's Spanish campaign, you could have restrained the actions of your Prime Minister and made her see the futility of this ruthless military campaign against your own people. The Government of India is far too strong and only the paranoid, the mentally-sick and the jingoistic Hindus will believe that the Sikhs were about to wage a war against the Government of India.

Regarding the Jallianwala Bagh tragedy, Nobel Prize Winner Sir Rabindra Nath Tagor wrote to the then Viceroy and relinquished his knighthood. He said: "The enormity of the measures taken by the government in Punjab for quelling some local disturbances has with acute shock, revealed to our minds the helplessness of our position as British subjects in India."

Sixty five years after he wrote this letter. I cannot find words which can express my feelings any differently.

What a massacre Mr. President, and with such a great vengeance!

The soldiers of the Indian Army, who now lost their lives, are being paid one lakh of rupees each and other pension benefits for their next of kin. Soldiers, who lost their lives in the wars of 1962, 1965 and 1971, were not extended these facilities. This extra bit of generosity clearly shows that the Sikhs are the biggest enemies of the Government of India, Pakistan and China having been relegated to second and third place respectively.

You have just returned from Argentina which was recently humiliated by Britain in the Falkland War. The rapid resistance put up by the Argentine soldiers was due to the fact that the Generals in Buenos Aires had killed 6,000 of their own youth in fake encounters. These Generals, as you must have observed, are now behind bars and awaiting sentences which may bring them death.

As such, this cruel and thoughtless military action in the Punjab will put Mrs. Gandhi back in the chair. But if there is a war, I tell you very frankly that after what your government and armed forces have done in the Punjab and are continuing to do with unabated zeal, the Sikhs will not support the government in its war effort, and the Sikh soldier, known for his intrepid resistance the world over, will not put up the type of defence which has always saved india's integrity.

The Army has already killed well over 20,00 of our youth and the whereabouts of over 50,00 are not known. Your Prime Minister and her Generals are pursuing a policy that has already made Gen. Dyer look mild in comparison.

Since I strongly disapproved of this military action of the Indian Armed Forces against the holy precincts of our gurdwaras and the indiscriminate killings of my people which will eventually lead to the disintegration of our country, I tender my resignation from the Indian Police Service with immediate effect.

I will henceforth work for rehabilitating the Sikh families who have suffered from this barbaric military action. May God help me in my endeavour.

I resign without malice towards anyone because to do so would be against the tenets of my religion.

In the end I appeal to all Sikhs to observe the 6th of every month as Martyrdom Day."

How People were Brutally Killed in Golden Temple Complex

Soon after the Indian Army stormed into the Golden Temple at Amritsar on June 5 last, many Sikhs resigned from their elective and official posts. One of them was Sardar Simranjit Singh Mann who resigned from the Indian Police Service. In fact, he blazed the trail for others. In his resignation letter to Giani Zail Singh, President of India; he had protested against this wilful desecration of the holiest Sikh shrine and other prominent gurdwaras in Punjab. This is the text of the Second Letter which Sardar Mann sent to the Giani, exposing the atrocities committed by the Indian Army.

Letter No. 2

"Mr. President,

Please refer to my D.O. letter No.CISF/GHB/SSM/84 dated 18th June, 1984 in which I had submitted my resignation.

Since I last wrote to you, I have, through my reliable sources, come across some extremely valuable information which I would like to place before you.

I have learnt that the Government of India had concluded that the military action in the Punjab would be a swift surgical operation and a military victory would be gained within two hours of the Indian Armed Forces entering the holy precincts of the Golden Temple. As a result of this bizarre conclusion, troops were moved into Punjab beginning 30th of May, 1984, by air, rail and road and this massive build-up was completed by 2nd June, 1984.

It was planned that the attack into the Golden Temple and 37 other gurdwaras should begin on 3rd June, to coincide with the martyrdom day of Guru Arjan Dev, the architect and builder of the Golden Temple, so that the Sikhs, who gather in large numbers in the Golden Temple and other historical shrines on that day, could be taught a thorough lesson for not obeying the dictates of your Prime Minister, Mrs. Indira Gandhi.

However, as luck would have it, Maj. General K.S. Brar, who had accepted to undertake this gruesome task, was not in a position to deploy his troops immediately as Maj. General J.S. Jamwal of 15 Division, who was originally allotted this task, had refused to carry out a massacre of the Sikhs, stating that, as a professional soldier, he could not butcher his own people.

General Brar took two days in deploying his troops and, hence, one of the greatest massacres in history was avoided. But a massacre it was nevertheless though the congregations assembled to observe the martyrdom day of Guru Arjan Dev had steadily begun to disperse. The Army was ordered not to take any prisoner – a fact which I have mentioned in my resignation letter.

After the operation into the Golden Temple was completed, 100 children between the age groups 8 to 12 years, who were students of the Damdami Taksal (Sant Jarnail Singh Bhindranwale was its head), were lined upon the *parikarma* (circumambulation) of the Golden Temple and asked individually by an army officer whether they “still wanted Khalistan”. Each one looked up towards heaven as if to seek some divine inspiration. And as each one received it, he uttered the Sikh slogan “*Jo Bole So Nihal*” and his comrades rent the air with the answer “*Sat Sri Akal*”.

One by one as each Sikh child took his pledge, he was shot dead by the jawans of the Indian Army. None amongst them asked for mercy, not anyone for a moment faltered in giving a courageous reply to their evil captors. They died to the last man upholding the glory and traditions of the Sikh faith.

Other Sikhs captured in this campaign were herded together in another batch. The Indian Army *jawans*, under the supervision of their officers, took off their turbans within the holy precincts of the Golden Temple and tied their hands behind their backs with them. Their hair tied in a knot were united and with these they were blindfolded. Their flowing beards were stuffed into their mouths. After this, they were mowed down with machine-gun fire.

On accomplishing this gruesome task, which had not been witnessed since *Auschwitz*, the dead in their thousands, amongst whom were pilgrims, men, women and children were taken in truckloads to Gobindgarh Fort maidan. Kerosene oil was sprinkled on huge dumps made up of a mass of dead Sikhs, and these dumps were set ablaze. Since some of the bodies were highly decomposed and kerosene oil could not completely consume this mass of human flesh, for a period of two weeks the stench could be felt in the area.

Within the Golden Temple precincts, the pigeons, which one sees in their thousands, flew away avoiding the barbarians sent by New Delhi and instead, vultures and crows perched on all the surrounding buildings, waiting to tear away and get at the flesh of Sikh martyrs.

Such is the devastation and havoc of the Indian Army, which you yourself saw!

Your Prime Minister, however, says that Gandhiji would have approved of this action. Can any Sikh have any respect for Gandhiji if your Prime Minister is to be believed?

It has also been reported to me that residents, living in the areas immediately outside the Golden Temple, were given only five minutes. I repeat five minutes, to vacate their respective premises on the day Army moved into, to clear the Golden Temple of staunch Sikhs. Some of these residents could not clear their houses within this stipulated time. And in order to meet the time limit, women and children, out of fright, leapt out from the second and third floors and died.

There were some women with their children who could not escape. Since the water supply was cut off, mothers, in order to keep their children alive, fed them on urine mixed with blood which was flowing in the drains.

Timur the Lame and Nadir Shah did not rain such devastation as the Indian Armed Forces under the command of Lt. General Ranjit Singh Dyal and Major General K.S. Brar. As President you are their Supreme Commander.

On 9th June, 1984, at 11 a.m. the Indian security forces in Amritsar caught hold of Flt. Lt. Sukhinder Singh No. 9764, an ex-fighter pilot who fought and was decorated in the Indo-Pakistan War. Without ascertaining his identity, the officer-in-charge of these myrmidons told him: "So, you also want Khalistan."

Before he could give a reply, he was knocked down with a kick in his groin and mercilessly beaten with rifle butts. He was left for dead in a quarter till his sister could rescue and resuscitate him.

The Government of India is issuing Ordinances which you are willingly signing to make the draconian National Security Act more stringent. Terror is being let loose on a wide scale in the Punjab and villagers are herded out at gunpoint by the Indian Army. They are being subjected to wide scale searches and, thus, being humiliated as race.

You cannot subjugate the Sikhs with tanks and other sophisticated Russian weapons. Even the Russians and other foreign countries will stop supplying you weapons, if your government does not stop using them against the Sikhs.

Amongst your government's allies, only Mr. Yassar Arafat, a faction leader of the P.L.O., has supported the government's barbaric action against the Sikhs.

Amongst the Sikhs also, only you, Sardar Darbara Singh, Sardar Santokh Singh Randhawa, Sardar Harcharan Singh Ajnala, Sardar

Birpaul Singh, and Bibi Amarjit Kaur have supported this heinous crime committed against their own people. I can't find another Sikh who has supported the government.

Like Mussolini, whom Hitler reinstated at Salo, you are signing away the liberties and lives of your own people and the other Sikh leaders mentioned above applaud every fiat you sign. Even Mussolini admitted after he saw all that Hitler made him do and said: "They call me Benito Quisling".

I mean no disrespect to the august office you hold but have only placed a few facts before you for your consideration.

I will be grateful if you could direct your government to accept my resignation without any further delay, as to serve this atrocious regime any longer is a shame and an act of absolute degradation for any self-respecting Sikh officer.

Appendix-24

Singh Sabha's Resolutions Against Blue Star

RESOLUTION

Sri Guru Singh Sabha have learnt with profound shock and deep anguish about the attack by Armed and Para-Military forces upon the Golden Temple complex in Amritsar on 5th June 1984.

We are also extremely pained and agitated over the sacrilege of the holiest of our shrines and the severe damage caused to the Akal Takhat, the sacred seat of Sikh temporal authority and other associated buildings inside the complex, in utter disregard of the feeling of the Sikhs which have been grievously hurt. The indiscriminate killings of innocent persons by Armed Forces troops at **AMRITSAR** and elsewhere has added fuel to the fire and caused resentment among Sikhs all over India and abroad.

The Managing Committee of the above Singh Sabha in its meeting condemned these brutal activities of the Armed and Para-Military forces and demands from the Government:

1. Expression of sincere regrets for ordering Army operations to take place in the Golden Temple complex.
2. Immediate withdrawal of all Army and Para-Military forces from inside the Golden Temple complex and other sacred shrines of the Sikh community.
3. Restoration of authority of the S.G.P.C. to control and manage all the Sikh shrines in the complex and other associated gurdwaras which had been under its control.
4. Lifting of the Curfew from the area around the Golden Temple to enable the devotees to visit their most sacred shrine and the holy city of Amritsar as before and enable them to participate in the Shabad Kirtan and other customary ceremonies.
5. Not to carry out repairs through official agencies with the intention of obliterating all signs of damage done to the building in the complex.

6. The Sikh of great Indian Army who left their assigned positions without authorisation under great stress of emotional strains and their religious sentiments were injured and while deciding about their cases, totality of the unfortunate circumstances be kept in view and leniency be shown to them.
7. As a first step to bring the normalcy in the Punjab all religious Sikh leaders be released.

It further appeals to the Govt. to accept the legitimate demands of the Akalis and solve the Punjab problem at Political level without further loss of time and put a stop to the victimization of Sikhs in Punjab and outside.

Resolved that copies of this Resolution may be sent to the President of India, The Kendri Sri Guru Singh Sabha and the Press to register our protest against the Army action in the Punjab.

Appendix-25

Memorandum on 'Blue Star'

Copy of Memorandum
presented to the President of India

To

The President of India,
Rashtrapati Bhawan, New Delhi

Hon'ble President,

Kendri Singh Sabha, an apex body of all the Singh Sabhas of India and abroad, expresses its profound shock over the attack of Armed and Para-Military Forces on the Golden Temple, the holiest of the Sikh shrines and many other historical shrines in the Panjab and Chandigarh. The entire Sikh community is feeling highly disturbed, pained and agitated over these happenings.

2. The sacrilege of the holiest of the Sikh shrines has immensely hurt the sentiments of the Sikhs all over the world, more particularly for total disregard of the innumerable promises and assurances given on the floor of the Parliament and outside by the Union Govt.

3. It is also on record that you too have on various occasions assured the Sikh community that you would see that the sanctity of the Golden Temple is not defiled.

4. This uncalled for attack on the Golden Temple and other holy shrines, together with indiscriminate killings of innocent persons will indeed be recorded as a Black Mark on the rulers in our history. Such a dastardly action and sacrilege have struck at the very roots of the national unity and democratic society.

5. We strongly express deep anguish over the action of the Govt. and request you to kindly order immediate withdrawal of Armed and Para-Military forces from the Golden Temple Complex and other associated Sikh shrines and restore their management to the legally constituted S.P.G.C.

6. As a first step to restore normalcy in the Punjab, all Akali leaders may be released.

7. The Govt. should leave the Golden Temple Complex as early as possible, untouched and unrepaired and entrust this task to the Sikh Sangat and/or Temple authorities.

8. It is needless to state that the Sikhs have always been in the forefront of the freedom movement right from the advent of Sikhism and any attempt to ignore their feelings will be the height of ungratefulness.

9. It is painful to note that in spite of the great contributions and sacrifices made by the Sikhs both in the Pre-Independent and Post-Independent eras, the Govt. has so far failed to recognise their legitimate demands and fulfil other rightful aspirations.

10. The history of the Sikhs bears testimony that this brave self-respecting and dignified community spared no sacrifices for the nation.

11. The Sikhs in the Punjab and outside of Punjab are being victimized and harassed. We appeal to the Govt. not to delay solution of the pending Punjab problems for sake of tranquility, progress and national integrity.

12. It is also requested that a deputation of five representatives of Kendri Singh Sabha may be allowed to visit Golden Temple Complex to have first-hand knowledge of recent happenings in the Complex to help in removing the misgivings of the Sikh community which have arisen on account of the various rumours which are being spread from various quarters.

13. It is crucial moment for the entire country which demands honest introspection by all so as to create an atmosphere of goodwill.

Respectfully yours,

1. Sd/- Gyani Gurdit Singh President
2. Sd/- S. Mehtab Singh Pramukh Sewak
3. Sd/- Giani Hardev Singh MLC (UP)
4. Sd/- Gyani Mewa Singh, Member, Dharam Parchar Committee, SGPC, and others
5. Sd/- S. Partap Singh, Hony. Secy, Kendri Singh Sabha
6. Sd/- Brig Hari Singh (Retd.)
7. Sd/- S. Naurang Singh Ory. Secy. Kendri Sri Guru Singh Sabha
8. Sd/- S. Pritam Singh Bhatia, President, Singh Sabha Ahmedabad

9. Sd/- S. Tarlochan Singh, Vice-President, Sikh Sabha, Ahmedabad.
10. Sd/- S. Ishar Singh, Vice-President, Singh Sabha Ahmedabad
11. Sd/- S. Mohan Singh Sawhney, President Singh Sabha Khar, Bombay
12. Sd/- S. Shamsheer Singh, President, Singh Sabha, Greater Kailash, New Delhi
13. Sd/- S. Gurbachan Singh, Gen. Secy, Singh Sabha, Greater Kailash, New Delhi.

Appendix-26

The Propaganda Blitzkrieg

"And if all others accepted the lie which the party imposed, if all records told the same tale, then the lie passed into history and became the truth."

– George Orwell in "1984"

And so the lie masquerading as truth has been published as the "White Paper" the better to tell the country that, in the Indian setting today, the prosecutor can be the judge, that government can do no wrong, that the country's security had indeed been endangered by the *handful* of extremists under siege in the Golden Temple, that, basically, if a Sikh does not endorse the army action in the Punjab, he cannot but be a terrorist, if he does not profess to have descended from Hinduism, he is beyond doubt a communalist and a dangerous fundamentalist. A dissenting view must be squashed with all the might of the media. Let us look at the incontrovertible facts.

June 5/6, 1984 was the night of the Generals and Punjab is an occupied territory. Generals never had it so good. They had prayers on their lips, blood on their hands (*bagal mein churi muh mein Ram Ram*) with casualties so numerous they lost count, and with the media fully focused on their "glorious" deeds of bravery. With the army in control, the state administration felt absolved of any responsibility for holding inquest over the dead – or the need for their decent cremation. While the list of hijacked passengers was published the same day, the list of those who died on the fateful night over a month ago has not seen the light of the day awaiting, perhaps, an approval from those in Delhi who master-minded the attack and have doctored the news ever since. Their purpose had nonetheless been served since the whole country had been persuaded to believe that all those who did not surrender, and were killed in consequence, were terrorists. Nobody need shed tears over them. If anything, the Sikhs should feel grateful that the holy Darbar Sahib has been "cleansed" using the blood of the dead, grateful that, barring

259 bullet marks, the holy shrine of Golden Temple was in tact, even if Sri Akal Takht had to be demolished with rockets from launchers and Centurion tanks. Who knows, may be, the terrorists themselves had caused the damage and devastation for such was their desperation!

Did you not see the enormous cache of arms displayed on T.V. day after day? These "terrorists" had, despite the tight encirclement by para-military forces for most of the last two years, smuggled in all those weapons. This could have been done, said the Prime Minister to BBC's Mark Tully, by concealing arms in the flour-bags meant for the *langar*! Ingenious, indeed!

The media and India's free Press lapped up all this unquestioningly just as, over the preceding two years, they had been ascribing even the ordinary day-to-day crime to the Sikh extremists, slurring over the long pending Sikh demands, the fanaticism of the Punjab's non-Sikh Press, the bungled negotiations, and the fake encounters in which the para-military forces had liquidated hundreds of Sikh youngmen.

Came a time when the Air and T.V. have to be taken seriously by the intelligentsia. Gautam Adhikary, writing in *The Sunday Times of India*, dated July 9, 1984 says: "With not even a dissenting view in three weeks of coverage, Punjab programmes have becoming predictable enough to switch off."

Government nevertheless remains undaunted. Without any pretence at following the principle of use of minimum force for minimum of time, it plans to pursue many phases of army action, to keep a tight hold over *gurdwaras*, to re-interpret Sikhism as another of the many Hindu cults, to tame the services, to import tested stooges into the state administration, to dismiss those who dare feel aggrieved at the enormity of the sacrilege, to look for remnants of devout Sikhs who still sport turbans and *kirpans* and to ensure, above all, that no meaningful Sikh leadership emerges.

The World Press has rightly applauded the *image* of Mrs. Gandhi because *the reality* must not be uncovered in the Orwellian Year of "1984"!

Appendix-27

White Paper on Punjab

IV

Army Action In Punjab And Chandigarh

On June 2, 1984 Government decided to call in the Army in aid of civil authority in Punjab. The task assigned to the Army was:

To check and control extremist, terrorist and communal violence in the State of Punjab and the Union Territory of Chandigarh, provide security to the people and restore normalcy;

To augment the Border Security Force presence on the India-Pakistan border lying within the territorial jurisdiction of Punjab in order to stop smuggling and unauthorised crossborder traffic.

2. The para-military forces deployed in Punjab and Chandigarh as well as the Punjab Armed Police units were placed under the command and control of the Army. Since the Union Territory of Chandigarh was also affected by terrorist action, the Governor of Punjab was appointed for a period of two months as Administrator of the territory in order to facilitate coordinated action.

3. On June 3, 1984, the entry of foreigners into Punjab was prohibited under the Foreigners Act. Subsequently, on June 15, 1984 the requirement of visa for persons holding passports of UK and Canada and on June 18, 1984 for nationals of other Commonwealth countries and Ireland was introduced. Such rules exist for nationals of other countries. Temporarily the movement across the Attari Checkpost was stopped.

4. The Government of Punjab took action under the Punjab Press (Special Powers) Act to prohibit the publication and transmission of material which may have the effect of inflaming communal passions and affect public order.

Plan of army operation

5. The Army's Plan to re-establish law and order in Punjab and Chandigarh envisaged apprehension of terrorist elements, the

flushing out of known terrorist hide-outs, recovery of illegal arms and ammunition and restoration of public safety and confidence.

6. By the early hours of June 3, 1984, Army formations had moved into Punjab and Chandigarh and had been suitably deployed in all districts.

7. By that time BSF battalions deployed on the Punjab-Pakistan border had already been placed under the operational command of the Army for effective coordination and control of the international border against illegal trans-border traffic and smuggling.

8. The States contiguous to Punjab had also taken action to prevent terrorists from crossing over into their territories.

9. While information was available that the terrorist possessed large quantities of arms of different kinds and had built up strong fortifications, tactical intelligence in regard to the strength and disposition of terrorist gangs was inadequate. However, to save the situation from irretrievable deterioration, there was utmost necessity for speed in the completion of Army operations.

10. Specific orders were given to troops to use the minimum force, to show the utmost reverence to all holy places and to ensure that no desecration or damage was done to the Harmandir Sahib, the sanctum sanctorum of the Golden Temple, and the Darbar Sahibs of other Gurdwaras. The use of high trajectory weapons and incendiary ammunition was totally barred. Troops were particularly instructed not to wear any leather items in holy places and to treat all apprehended persons with dignity and consideration. All Commanders were instructed to continuously use the public address systems for a number of hours at every suspected hide-out or terrorist base, to advise terrorists to give themselves up in order to prevent bloodshed and damage to holy places before the use of force for their apprehension.

11. A 36-hour curfew was declared by the Punjab Government and Chandigarh Administration from 2100 hours on June 3 which was later extended selectively. Police cordons around the Golden Temple and other known terrorist hide-outs were made more effective by Army units who also assisted in ensuring that curfew was not violated.

Army action in the Golden Temple area

12. A map showing the lay-out of the Golden Temple and adjacent buildings together with a brief description is given at Annexure X.

13. The Dispositions of the terrorists in the area were organised on military lines which exploited the defensive potential of the buildings to the fullest extent. The terrorists selected the Akal Takht as a

building of prime importance since it housed Shri Bhindranwale and his headquarters and was tactically significant to their operations. The approaches to the Akal Takht were heavily defended.

Lookout and early warning posts

14. Seventeen houses in the civilian residential areas had been selected by the terrorists at distances of 500 to 800 metres from the outer periphery of the temple complex and held by approximately 10 men each. These lookout and early warning posts were veritable arsenal of light machine guns and other automatic and semi-automatic weapons with huge caches of ammunition. The posts had been given common communication equipment to be in instant touch with their command posts. In addition, posts had been created on the structures which dominated the entire surroundings, i.e., the overhead water tank east of Guru Ram Das Sarai, the two towers adjacent to, and west of, the Langar¹, each of which has a staircase whose ventilation recesses were used as gun positions. Canopies, sunshades and other projections had been sand-bagged on three sides and developed as machine guns nests. Verandah arches had been closed with masonry and used as vantage firing posts with slits just enough for observation and fire.

15. *First Line of Positions* : Weapon positions had also been sited on the roof tops of all buildings on the eastern side which constituted the most vulnerable approach. In addition, the buildings themselves permitted fire through sand-bagged windows at each floor level.

16. *Second Line of Positions*: Similar weapon positions including a large number of alternative positions had been created on the roofs and intermediate floors of the buildings enclosing the entire temple complex.

17. *The Main Positions at the Akal Takht*: As the Akal Takht is set back from the Parikarma² on the western wing, the open space to its east had been developed as a "Killing ground" with effective fire being brought down on it from the Akal Takht itself, the buildings on its right and left and also from the Toshakhana³. The Akal Takht had been fortified as well as any dug out position of any modern army. Starting from the basement upwards, gun placements had been planned out and sited at every level including the floor level, the window level, the roof ventilators, on to the first floor and the upper

¹Free kitchen for devotees or pilgrims.

²Path around the sanctum sanctorum.

³Place where gifts/offerings are kept.

storeys. The terrorists had cut holes in the walls and the marble facade like a pillbox for the positioning of weapons.

The Pattern of Terrorist Resistance

18. The design of resistance of the terrorists as it turned out during the Army action was as follows:

Early warning and aggressive attrition by the peripheral ring of lookout posts; and clever fire control and use of alternate positions on the first and second defensive lines.

19. It was evident that weapons were craftily developed and tried. For example, while rifles and automatic weapons were used from the lookout positions, sten machine carbines were the major weapon on the first and second defensive lines since ranges of more than 25 to 30 yards were rarely available around the main complex. There was very effective coordination of fire. The selected killing-ground was fully covered by fire from all sides. The limited anti-tank resources were well marshalled and used only when a mechanised vehicle came within range.

20. The terrorist had converted the Golden Temple complex into a veritable fortress for mounting attacks on any para military or military forces that might challenge their position. They had received extensive training in military operations and use of explosives and sophisticated weapons, installed their own communication systems and stored adequate quantities of foodgrains to last several months. Training had been provided by experienced ex-army personnel and battle plans had been drawn up with ingenuity, maximising the advantages provided by the basements, underground passages, niches, winding staircases, lookouts and towers in the Temple complex. Wearing assorted uniforms, the terrorists were as well trained and well equipped as any regular force could be. The pattern of killings, bank robberies and arson committed by the terrorists all over Punjab also showed how well they were trained in the use of weapons. They had an elaborate protective cover of getaway plans and eventual sanctuary in places of worship.

21. During the afternoon and evening of June 5, 1984, repeated appeals were made to the terrorists on the public address system to lay down their arms and surrender to the authorities to prevent avoidable bloodshed and damage to structures in the Temple complex. 129 surrendered. At 1900 hours on June 5, the Army commenced preliminary operations to secure dominating buildings on the periphery of the area occupied by terrorists around the Golden Temple.

22. From 2230 hours, Army units commenced moving to the Golden Temple precincts. This drew a very heavy volume of fire from the terrorists into the narrow streets at close range. A large number of tear-gas shells were fired by the troops into the terrorist positions including the Akal Takht but these were not effective since all windows and doors had been heavily barricaded with bricks and mortar as well as sandbags. Despite casualties, the troops gradually closed in and commenced movement into the area around the Temple, after overcoming very heavy and organised resistance.

23. Troops effected entry into the area around the Sarovar¹ through the northern deori² and the southern library building. In the latter area, the terrorists were firing from a number of machine gun positions in the library building and were hurling country-made grenades, lighting them with match-sticks. A fire was noticed at this stage in the library. Troop fire-fighting parties were foiled by the heavy machine-gun fire from the terrorists. By the time the terrorist positions could be overcome, the library had been gutted.

24. Intensive fire had to be faced from the Akal Takht, which stood like a fortress, covering all avenues of approach with a deadly and concentrated volume of machine-gun fire, causing heavy casualties.

25. The terrorists from their outer line positions also reinforced the fire from the Akal Takht and made it a bastion of automatic weapons. Machine-guns from Harmandir Sahib simultaneously raked the Parikarma³ and surrounding buildings from where the troops had forced back the terrorists. In spite of this the troops exercised great restraint and refrained from directing any fire at Harmandir Sahib.

26. At 0100 hrs. on June 6, Sant Harchand Singh Longowal and Shri G.S. Tohra surrendered near Guru Nanak Niwas with about 350 people. The terrorists opened fire at them and also lobbed hand grenades to prevent their surrender. As a result, seventy people were killed including 30 women and 5 children. Among those killed were Shri Gurcharan Singh, who had been accused by extremists of having plotted the murder of Shri Sodhi and Shri Bagga Singh, a vocal critic of the cult of religious terrorism preached by Shri Bhindranwale.

27. At about 0410 hrs. on June 6 some troops attempting to close-in on the Akal Takht in an Armoured Personnel Carrier (APC) were fired at by anti-tank rockets from the Akal Takht which damaged and immobilised the APC. Thereafter, one tank with its searchlights

¹Holy Tank.

²Entrance.

³Path around the sanctum sanctorium.

was taken into the area to blind the terrorist positions in the Akal Takht and to engage these with fire. By the morning of June 6, the troops had effectively engaged all gun positions at the Akal Takht. Room-to-room engagement commenced. Some extremists were then observed rushing down towards the first and ground floors, where shortly thereafter an explosion took place and a fire started. The troops also heard an exchange of fire among the extremists themselves on the ground floor and in the basement.

28. Some terrorists at this stage attempted to rush out of the Akal Takht to clear some areas held by the troops, but were beaten off. A group of 10 terrorists thereafter surrendered with a white flag. Room-to-room fighting, however, continued in the Akal Takht till it was cleared by 1230 hours on June 6, except for resistance continuing from the ground floor and basements.

29. That afternoon, the troops made further appeals over loudspeakers to the terrorists to surrender. As a result some 200 terrorists surrendered including 22 from Harmandir Sahib. The Head Granthi and two other Granthis were at this stage found to be safe inside the Harmandir Sahib.

30. The continued resistance from the ground floor and the basement of the Akal Takht was tackled during the night of June 6/7. When this resistance was finally overcome the troops commenced a thorough search of the ground floor and the basement. The bodies of Shri Bhindranwale and Amrik Singh were found among 34 other bodies on the ground floor of the Akal Takht.

31. Some terrorists remained active in the morning hours of June 7 using the surrounding buildings and number of tunnels in the area of the Golden Temple. It required a few days of careful search to winkle out the last of the terrorists who inflicted brutal casualties on troops. No women or children were killed in the action by the troops.

Damage to buildings in the area of the Golden Temple

32. From the commencement of the planning stage of this operation damage to the temple buildings was not contemplated and strict instructions had been issued to preserve the buildings. The heavy toll of Army casualties is an indication of the deliberate restraint exercised by our troops in order to ensure that the Harmandir Sahib and Akal Takht were not damaged despite the murderous small arms and automatic fire which poured forth on the troops from these buildings from the terrorists. Fire on the Akal Takht had to be opened only when very high casualties began to accrue to the troops

and when the terrorists escalated action by using anti-tank weapons from this building.

33. A large quantity of weapons, ammunition and explosives was recovered, including automatic and anti-tank weapons. A small factory for the manufacture of hand grenades and sten-guns was also found within the precincts of the Golden Temple. The Army is still engaged in the process of recovery of arms. It will take some time to complete this task. A list of arms recovered till June 30, 1984, is at Annexure XI.

Brutalities by the terrorists

34. The atrocities committed by the terrorists on innocent Sikhs and Hindus prior to the induction of the Army are well known. During the Army operations, instances of further heinous acts and barbarous vandalism by the terrorists in control of the Golden Temple have come to light. On the night of 5/6 June 1984 when, on appeals by the Army, several civilians including women and small children from the Guru Nanak Niwas and the SGPC building came out to surrender, the terrorists opened fire and lobbed grenades at them and killed 70 people including 30 women and 5 children. The terrorists also tortured in a most inhuman manner and brutally murdered two Junior Commissioned Officers whom they had captured. They strapped explosives on to the body of one of the Junior Commissioned Officers after having skinned him alive, and blew him up as he was thrown from the upper floor of the Akal Takht. On 8 June 1984 they hacked to death an unarmed army doctor who had entered a basement to treat some casualties.

35. A total number of 42 religious places were identified where terrorists were based. During the evening of June 5, repeated appeals were made at all these places over public address systems for the terrorists to hand themselves over to the authorities. When there was no response, the Army moved into these premises in stages to flush them out. In most of these places very little resistance was encountered. However, the terrorists offered a fair amount of resistance in the gurdwaras at Moga and Muktsar and fired at the security forces. Besides they also fired in Faridkot, Patiala, Ropar and Chowk Mehta. Major recovery of arms and ammunition was made from religious places at Chowk Mehta, Patiala and Ropar. The last of these operations was completed by 1700 hours on June 6 after the Army had flushed out terrorists from the Muktsar Gurdwara.

Use of Navy and Air Force in the Operation

36. The Army had the help of the Navy and Air Force for certain supporting services.

37. The Navy provided a contingent of divers to search for arms, ammunition and equipment which the terrorists threw into the Amrit Sarovar¹ and the wells around the Golden Temple as also in various ponds and wells in other areas. These operations have been successful, resulting in a large haul of arms, ammunition, equipment and valuables.

38. The Air Force provided transport air support for speedy movement of certain Army elements from other States. Effective helicopter communication and reconnaissance flights were also organised by this service.

Casualties and recovery of arms, ammunition and equipment

39. Details of civilian and Army casualties and of arms and ammunition recovered up to June 30, 1984 are given in Annexure XI.

Military Civic Action

40. To reduce the hardship faced by the civilian population during curfew, the Army undertook positive steps in conjunction with the civil administration to ensure that the supply of essential items was maintained at all times. This included the running of escorted convoys, carrying essential items, and free distribution of essential supplies in certain affected localities. Army medical teams also rendered medical aid to the public in many areas. Canteen facilities were provided to ex-servicemen as well as to the families of serving soldiers.

Appendix-28

Khushwant Singh's Speech on White Paper

I have many unpalatable truths to tell... Bear with me till I have finished, thereafter you will be more than welcome to refute them if you can. Although I am only a nominated Member of this House and therefore the lowest of lower castes in this House. I make bold to assert that I speak on behalf of 14 million of your fellow citizens known as Sikhs. I go further; what you have heard and may hear from other Sikh members of the ruling party does not echo the sentiments of the community.

My heart is very full but I will be as unemotional and objective as I can. All I will say about the army action is that it was a tragic error of judgement, a grievous mistake and miscalculation which will cover many black pages in the history of India, Punjab and the Sikhs. I will dwell in greater detail on how to retrieve the situation.

Perhaps the best way of examining the thesis of the White Paper placed before us is to go backwards, to see the situation today and go back to the genesis of this sorry business. The situation today is that the religious susceptibilities of every single Sikh has been deeply wounded – 99 per cent of these Sikhs had nothing whatsoever to do with Bhindranwale, Akalis, the government or politics of any sort. This action has humiliated the pride of a very proud people. A proud people do not forget or forgive very easily. You have divided Hindus and Sikhs: the wedge was driven by the Akalis, widened by Bhindranwale and made unbridgeable by you. Sikhs who, till yesterday, regarded themselves as more than first class citizens are now treated worse than third class citizens. Discrimination against them continues at airports and check points on rails and roads. It has created a sense of isolation and alienation among them. They are beginning to ask themselves; “Do Indians still regard us as one of them?”

This being the situation, ask yourselves two questions. One, could any action which alienated the feeling of 14 million fellow citizens who form the backbone of our defence services, provide more than half the food for the country and live on the most sensitive border

facing Pakistan be ever justified? Second, is it really true, as maintained in the government's White Paper, that it had no choice except to mount military invasion on the Golden Temple?

My answer to both these questions is a categorical "No".

The White Paper has much to say about the Akali intransigence, its constantly changing stance, making new demands and going back on points on which agreements had been reached under pressure of extremists. It says nothing about the government's own shifting of position and resiling from solemnly given undertakings. I will not go over them again but it must be recorded that after every breakdown of discussions the Prime Minister came out with the stock reply that some matters concerned neighbouring states which had to be consulted. Apparently, in two years such consultations were not concluded.

The White Paper also makes no mention of the home minister's repeated statements in both Houses of Parliament and the PM's assurances outside Parliament that the government had no intention to move the army into the Golden Temple. Nor does it tell us in any convincing detail how many men there were with Bhindranwale and how they came by the kinds of weapons the government now alleges they had with them.

The major question which is left unanswered is whether or not the government had any alternatives other than sending in the army into the Golden Temple. I can suggest two, neither of which has been mentioned in the White Paper. First was a commando action by men in plain clothes designed only to take Bhindranwale and his men alive or dead. This would have spared us the loss of innocent lives as well as massive destruction of sacred property. The second was for the army to cordon off the Golden Temple complex, occupy the *Guru ka Langar*, cut off the supply of food, fuel and electricity and force Bhindranwale's men to come out of the Akal Takht and the *Parikarma* to fight. The result would have been quite different. However, neither of these alternatives was given serious consideration and instead we had six army divisions moved into the Punjab (more than we had in the three wars with Pakistan), a force led by a Lt. General and two Major Generals equipped with armoured personnel, carriers, tanks, mountain guns — all to flush out no more than 300-500 men armed with nothing more than sophisticated LMGs, antiquated 303 rifles, some hand grenades and a rusty bazooka.

I visited the Golden Temple a month after the army action, interviewed many people who were in the complex at the time and saw the damage done with my own eyes. Let me tell you, and through you the rest of the country, that this White Paper has grossly

underestimated the number of lives lost, overlooked mentioning that the dead include hundreds of totally innocent men, women and children. The government spokesmen have repeated *ad nauseam* that no damage was caused to the Harmandir; as a matter of fact it still bears fresh bullet marks by the score; a handwritten copy of the Granth pierced by a bullet; a blind *raagi* Amreek Singh was killed inside while doing *kirtan*; the Akal Takht is a total wreck—and besides the entire archives consisting of nearly 1,000 manuscript copies of the Granth Sahib, an innumerable *Hukumnamahs* bearing signature of our Gurus gone up in flames. What is most painful about this vandalism is that it took place after resistance had been overcome.

Now we are talking of the healing touch. The place of honour—in inverted commas — should go to the government controlled media—All India Radio and Doordarshan and an objectly subservient national press. For days on end the TV screen showed the Harmandir at a distance so that no damage to it could be seen; the destroyed Akal Takht was carefully kept out of view. At first the press told us that 13 women had been killed, then no women had been killed, then that they have been killed by a grenade thrown by the extremists. That Bhindranwale had committed suicide, he had been killed by his own men — and ultimately that he had fallen in battle; that hashish, opium and heroin had been found — then that was found outside the temple complex; that women of loose character were with the extremists, some of them pregnant. How more pregnant with lies can anyone's imagination be?

It is evident that despite what you have done, you have not broken the back of terrorism.

Appendix-29

Lok Sabha Discussion on White Paper

APPENDIX 1

"Lok Sabha Discusses The White Paper"

PUNJAB EVENTS: AN ABERRATION

→ Madhu Dandawate

I will start from the point which Mr. B.P. Bhagat, referred to the spirit of national integration. I think there should be the ideal on which we can say that there is a national consensus.... When we speak of national integration in this land of Gandhiji, let us realise that national integration can never mean merely the territorial integration of India: it is essentially the total integration of minds. Let me point out at the very outset that what is needed is an integration of minds, integration of the various communities, integration of the various religious groups. Therefore, even at a time when the army has marched into the Temple, when the arms have been taken out and extremists have been liquidated...let not the national and the Government parade as a victor. When we brought this point of view to the Prime Minister, even she agreed and she told the leaders of the Opposition that we must not parade as victors in this moment of crisis, and I share that feeling.

*The reported speeches are not a verbatim record
but they are nearest to what was originally said.*

If they parade as victors in this crisis, that will defeat the purpose for which strong action was required to be taken.

Let me try to point out that there is a certain climate that has been created, after a certain action has been taken. There can be a different point of view regarding whether the military action was

necessary or not. Because certain preliminary steps were not taken, because the Government refused to be firm, in Punjab. Bhindranwale continued to be the *de facto* government, though the *de jure* government was somewhere else. The extremists were allowed to have their sway with the full knowledge of the intelligence machinery in Punjab, the arms were allowed to be inducted into the gurdwaras. When all this was happening, those who claim to be the rulers, had it as their bounden responsibility that they continue to rule and that they do not allow any other *de facto* ruler in this country or in any particular State. But precautions were not taken.

Since in democracy free and frank, and sometimes brutal, discussion is permissible, some of us are of the opinion that deliberately the entire situation was allowed to drift and deteriorate up to a point where the intervention of the military would become inescapable, and the military action would mean a great victory against those who have been defeated.

Some of us pointed out to the Prime Minister at her meeting with the Opposition leaders that when military action took place and some people were killed there, there were some people who distributed sweets. It is an aberration in our public life. And I told the Prime Minister and I will repeat it here. She shared that point of view and that agony also.

I am not surprised about the aberration and perversion because even when Mahatma Gandhi was killed, I have come across people who distributed sweets. If that perversion could take place at that time, I can understand this perversion now. And I am glad the Prime Minister dissociated herself. Though these things have taken place, she said "I totally disapprove of what has happened."

The army has not gone back to the barracks. The army is in the Golden Temple. The army is in Punjab. Even then there is no peace. Extremists are still carrying on their activities. People are still being killed. Again we find that there is damage and breach down to the Bhakra Dam main canal causing incalculable harm not only to the people of Haryana, but to the people in other parts also. These mischiefs are still continuing. But in this context I would like to remind the House that the army might become inescapable. But remember the army alone cannot solve all the problems.

Ultimately, a new climate free of alienation of all religions and groups, has to be created by a different type of pattern or programme. Here is a man called Gandhi who gave us the path. It is only on the path of Mahatma Gandhi that we will be able to solve the problem of Punjab permanently. That is the only eternal path that India can take up.

We had the White Paper laid on the table of the House.

As far as the White Paper is concerned, it is my firm opinion that the White Paper is the white cover to conceal a number of facts that would have led to an altogether different analysis. The White Paper is trying to conceal all the failures of the Government to bring about the settlement of the Punjab problem. I do not want to make allegation against an individual. But let it be very clear that Bhindranwale was the creation of the ruling party.

A word about tripartite talks. Fortunately, I had an opportunity to participate in all the tripartite talks with the Akali Dal right from the first meeting up to the last. I would like to go on record that former Home Minister P.C. Sethi was replying to the debate which I initiated on an adjournment motion on Punjab on the floor of this House. He confirmed that the Opposition parties had contributed a lot in narrowing down the differences and only the marginal differences were left off. The Prime Minister and the Government ought to have picked up this opportunity to work out the consensus that was evolved.

There was the question of an all India Gurdwara Act. The Prime Minister says, "will gurdwaras agree and how many gurdwaras are to be there?" The Akali Dal told us that only historic gurdwaras should be brought in the ambit of a uniform All-India Gurdwara Act. They are concerned only with those. That problem was solved. About the Centre-State relationship, we said it is not the question of Punjab and the Centre. There is the question of Karnataka and the Centre, Maharashtra and the Centre, Andhra and the Centre and therefore let us accept the suggestion of having a commission supervised or presided over by a Supreme Court judge. The Sakaria Commission was appointed and we welcomed that in this very House. The Akali Dal also accepted that. Regarding the river water dispute, they also accepted that the entire matter be referred to a tribunal under the 1956 Act. One more point is about the interpretation of Article 25. Nobody touched it in the debate. I would like to touch that issue. I am of the opinion and I welcome the attitude of the Government in this regard. The day when Mr. Sethi came out with a statement "We are prepared to get Article 25 examined with legal experts and various organisations of the Sikhs," some people were unhappy about it. But I am happy. If you go through the Constituent Assembly debates and try to look at what Ambedkar or Nehru said you will find that they had made it explicitly clear. The framers of the Constitution made it clear that despite the construction of the wording of Articles 25, separate religious identity of the Sikhs is already ensured.

A DECISION OF A STRONG GOVERNMENT

— *Rajiv Gandhi*

The Sikh involvement in India since our Independence has been beyond their numbers. Their contribution to the country's development has been substantial. They have raised Punjab from a very pathetic State in Punjab in 1947, just after the riots, to a prosperous and leading State. This has happened because they are hard working and have initiative. But this could not have happened without the infrastructural help provided by the Congress during these years. There has been no dearth of Sikhs in our public life in administration, in foreign service, in judiciary or in any sphere of our national activity. They have been able to rise because of the Congress policies, whereby every group, whether it is a religious or caste or linguistic or regional group, is given full opportunity to rise to the highest level. There has been no step-motherly treatment towards the Sikhs.

...the Army must come in for praise. The restraint...and valour they have shown must be put on record. The decision whether the Army should or should not be sent in must have been one of the hardest decisions any Government had to take since Independence. It is only a strong Government that was able to take such a decision. If there had been a weak Government, these things (acts of large-scale violence and terrorism) would still be going on.

We have seen what happens under conditions of confusion and chaos as we saw between the years 1977 and 1980. One of the major reasons that the negotiations with the Akalis had not come to a positive conclusion is the confused attitude of the Opposition towards the Akali demands...

The Government's stand on the demands has been very clear right from the beginning. There has been no question of accepting any demand that can affect the integrity of our country. There can be no question of modifying our basic standards just because one small political party which represents, may be 20 per cent of the people in one State, puts up a demand, no matter what support they get from the Opposition.

What you have to analyse is the stand that the Akali Dal was taking. If we look at their final demand on Article 25, one thing is very apparent right from the beginning. They always put their demands forward first and only later considered what their demands actually were.

One example is Article 25. The demand was put forward. I think, on 26 January this year. The then Minister of Home Affairs,

Mr. P.C. Sethi, agreed to all their demands and said, "We are willing to amend the Article. But please let us know what you want to amend."

It was almost one month after they had put forward their demand for amendment of Article 25 that they set up a committee to decide what was to be done with Article 25! They put up the demand without knowing what they wanted.

They put the demand for a transmitter in the Golden Temple. When they were told, "This is not possible, but we will allow you transmission", they did not know how long they wanted the transmission for.

On the Gurdwara Act, the Government kept on asking them "Please give us a list of your historical Gurdwaras. Please give us a draft of what you consider the Gurdwara Act." But that has not been forthcoming.

When demands are put forward these must be specific, concrete. Then they can be discussed positively. But, all their demands have been so nebulous and vacillating that it has been very difficult to pin them down to a specific issue.

Even on a very crucial issue like water, it is not a question of whether Haryana is getting water or Rajasthan. The question they should have put forward was that Punjab is so many MAF short of water. They could have said "4.2 is not enough; we want 5.2; we want 6.5; we want so much". But, they did not know that. In fact, they had forgotten the fact that, in many areas of Punjab, there is water logging taking place because of excess water.

Their major demand, which many of our members from the Opposition have said was dropped, was the Anandpur Sahib resolution. I do not know what discussions took place between the Opposition and the Akali Dal. But I do not think that the demand was ever dropped.

Has not Sant Longowalji asked very specifically in his letters about the Anandpur Sahib resolution? Has he not said that the resolution demand is there and has been there right from the beginning to the end?

Has he not demanded that the terms of reference of the Sarkaria Commission be modified so that the resolution in full be put in front of the commission?

Is that what the Opposition wants?....

The actual demands have been vacillating right from the first day. Their main demand right from the beginning has been the Anandpur Sahib resolution. At no stage has this demand been dropped

and there is not way that the Congress Party and the Government could accept this, no matter what the Opposition has been trying to say here on the floor of the House.

The SGPC which is totally run by the Akali Dal, shares the major responsibility of what has taken place in the Golden Temple. How is it that arms and ammunition were stored in the temple? How is it that bodies of the dead were found outside the temple every few days? What was happening inside the Golden Temple?....

Who was talking to them? Who went to the Golden Temple? Who came back and told us that "there is nothing there, there are no arms, there is no ammunition there"?....

I believe three members of the Janata Party did visit that shrine...

They came back and said there is nothing happening in the temple. Is this not the same party which sent two people to Pakistan? Did they also not come back and tell us that everything is fine? They have got these F-16s so they can be but in the children's playground and children can slide down their wings?....

There have been some demonstrations in London. Who was involved in these demonstrations? A certain Sikh leader was there, yes. But who was working with him? I would like the Home Minister to confirm whether Aminullah Khan of the J and K Liberation Front was not there right with him in front of the procession.

....here, on the back of the White Paper, there is a photographat the bottom, there is one banner – the front banner is a Sikh banner extolling a particular gentleman and at the bottom, on the left side, the photograph is not very clear, but you can read it. It says "Pakistan Youth Convention".

Now, who is involved in these demonstrations? When the demonstrations took place recently in Jammu and Kashmir who was there with the handful of the Sikhs in the demonstration? Was it not the Jamia-e-Islami or the Jamiat-e-Tuleba? Were they not there with the Sikhs? Who is instigating this? Now, we had a hijacking. What happened during hijacking? There were rumours that certain two Ministers from the previous Government were present at the airport, very senior Ministers. They were at the airport from 2 O' clock to 4.30. Neither did they receive any body nor did they see any body off. They were not going anywhere and they did not arrive from anywhere. But they were there. One wonders why they spent two and a half hours at the airport...

Then, when aircraft came over Lahore, Parminder Singh, who was the main hijacker asked the Lahore control tower for permission to land. Lahore said: "No, you cannot land, go away." He asked

again; again he was told to go away. Then he said, "I am Parminder Singh Harfanmoula, give me permission to land." Lahore still said, "No". He then repeated four times Harfanmoula. Then ultimately he said: "Tell them..." Who is "them"? He said: "Tell them, it is Harfanmoula". Then, he came back a few minutes later and gave him the permission to land. I wonder, where these 'Sikh' people had learnt their Urdu, because they were speaking Urdu, whether it was this side of the border or the other side....

I heard that, while the Pakistan intelligence was interrogating the hijackers, one of the questions that was, put to them was, "Why did you, not train the six people better?" There were nine people: three were a little professionals, the others were very very *dheele* (unsmart).

....This was overheard by one of our Indian Airlines people. so, I have been told...

Much has been made during these last few days of Congress involvement with certain extremists and Akali leaders. It has been clarified on the floor of this House by one of our members that the accusation was totally false. It is false. I myself clarified when my statement was dragged in.

My statements are there; I have collected them for a little over year now. Almost every statement says that strong action is required in the Temple to get these extremists out. At one point, I have gone beyond that and have said; I will quote here: "Also when he talked about the Punjab situation saying that his views differed from those of the Central Government, he called for much tougher action in the State." My position on this has been very clear right from the day one.

.....there are a few more statements from the Opposition, which I would like to point out, just to show the way their minds are functioning.

In a letter to Mr. Chandra Shekhar, three party leaders, a former CM (Chief Minister), Mr. Banarasi Das, Mr. Ravindra Verma and Mr. Raj Narain stated that the statement, "Army action in Punjab is unfortunate," did not take into consideration the gravity of situation.

This is one political party, Janata President Chandra Shekhar has described the calling of the Army into Punjab unfortunate and demanded its immediate withdrawal. On the one hand they say that they do not have a clue as to what is going on, on the other they are saying "withdraw it, it is unfortunate, etc. ..."

Because of your confusion, you have confused even the poor Akalisyou have not only confused, but led them down the garden path....

What we must realize today is: What were the weaknesses that led to this situation? One of the weaknesses has been the administration; and I am glad that the Government has taken a stand on having 50 per cent (of officers of the all-India services in a State) from outside... this is bound to help.

There will be regional demands, there can be every group's demand. They must be raised; they must be voiced. And in a democracy then can sometimes go beyond what we actually started by asking. But that is where your leadership comes. That is where you must control your people.

You must see that your demands do not transgress on the liberty of others, on the freedom of others. That is where you have not been able to control the Akali Dal. That is where it has gone out of your hands. This is where it has gone out of the Akali Dal's hand.....

This is the first time in 37 years that organised violence has escalated and become terrorism. And it is time we put heads together and try to finish this off. It is no use of the Opposition trying to get political mileage out of it just because we are a few months away from election. We have to sit together, think together and come to some positive conclusions as to how to finish these things off and how to hold the country together.

SOME POWERS AIM AT BALKANIZING

— Satyasadhan Chakravorty

The White Paper very cleverly accuses the Akali Dal for all the happenings in Punjab. It also holds the Akali Dal and its leaders responsible for the circumstances leading to the Army action, which is known as Operation Blue Star in the Golden Temple precincts. The White Paper portrays the Government as if it has no responsibility, almost as an innocent lamb. Is it so?

The White Paper also refuses to take the people of India into confidence, as to the role of foreign powers. It says that there are foreign hands active not only in Punjab, but also in other areas of our country. And these foreign powers are interested in destabilizing our country, in encouraging secessionist forces, in subverting the socio-economic fabric of our country. But, unfortunately, nowhere is it narrated as to how they are trying to do it, what are the evidences in possession of the Government, and what are the facts which led the Government to come to such a conclusion. I believe, and we have warned many times in this House, that it is true there are some foreign powers which are interested in destabilising India and also

balkanizing this country. We have warned here in this House, on behalf of our party, many a time that there are powers; but, unfortunately for reasons best known to them, the Government have not named any country.

And the Prime Minister has said..."It is not possible to name them: there is circumstantial evidence". If there is circumstantial evidence, in such an important matter, I think the Government if it is a question of unity and integrity of the country, should come forward and identify the forces and also share their knowledge with the people of India in the interest of the security and integrity of our country."

What the Union Home Secretary said in his press briefing is absent in the White Paper: he said something about the involvement of the foreign countries, but unfortunately, the White Paper does not mention it at all. The main question is that the White Paper fails to give answer as to why the Government failed to control the activities of extremists in Punjab: Why were these arms smuggled.

And the White Paper says that the Government intelligence did not fail. If the Government intelligence was intact, it was working and working well, if the Government was in possession of all the information relevant to the activities of the extremists, then why, is it that the Government did not take any measures to stop smuggling of arms into the Golden Temple? The White Paper is silent about it and its silence is almost deepening, because this is the question, this is the crux of the problem. The extremists did not start their activities on a particular day. If their activities were going on and the Government was in possession of the information...the White Paper fails to tell the country why the Government could not act, did not act or may be was not willing to act. I want the Home Minister to explain and make it abundantly clear to this House about this inactivity when it was in full possession of the information.

It appears from the White Paper that the Government was ready to talk and the Government negotiated with them: There were negotiations, but for the failure of the negotiations, for the failure to come to an agreement, the Akali leadership was responsible. Do the facts say that it is not true. So, it is not the Akali Dal but it is the Government which was ready for a settlement.

In this House we have advocated from the Opposition benches to settle it, negotiate with them, isolate the extremists, do not rely on administrative measures but have a political settlement. But, unfortunately, this was not done. The Akalis started their movement.

And, what happened? When the negotiations took place and an agreement was reached on 3 November, and statement was to be made by the then Home Minister in Parliament, on the next day, suddenly the Government changed the statement. Is it a fact that an agreement was reached on 3 November, that the Home Minister was to make a statement in this House and that suddenly the statement was changed? I would like the Home Minister to reply whether what I am saying is right or wrong because I am quoting from a member who was taking part in the negotiations. I would like the Home Minister to be forthright and tell me whether it is a fact that the statement was an agreement on 3 November. Is it a fact that the statement was changed? If so, will the Government tell the reason why this was done?

Again, on 18 November an agreement was arrived at and was put down on paper. A plane was ready to leave for Amritsar to carry the Akali leaders and the Government spokesmen to make an announcement from there. But the final draft was different. And that is why the Akali leaders could not agree, and there was no announcement.

Again in December-January, the Government started negotiations but they did not succeed. The Prime Minister called the Opposition parties for a tripartite conference on 24 January 1983. An agreement was almost reached.

Again, the Opposition parties met in Delhi on 30 June, 1983. They suggested a particular formula and that was not acceptable to the Government. And what was the formula? Chandigarh should go to Punjab, and Haryana should be compensated....some area should be given to Haryana as a compensation — Hindi speaking areas; the water dispute should go to a tribunal; and the territorial dispute should go to a tribunal. The Prime Minister rejected it but on 3 June, the Prime Minister herself made the same proposal. The proposals you rejected a year earlier, the proposals which were put forward to you by the Opposition leaders and by the Akali leaders, the same proposals you announced over All India Radio. You must make it clear, what the differences are. If you agree to them on 3 June, 1984, why is it that you could not agree to them on 30 June, 1983?

These are the facts. I know that Akali Dal had their Anandpur Sahib resolution. But after the appointment of the Sarkaria Commission the Akali Dal had agreed not to put forward or rather push through their Anandpur Sahib resolution. But so far as the territorial demands and water dispute are concerned, I find that there was some sort of

an agreement. But I just cannot account for as to what was the policy, reason, compelling circumstances and political sagacity that led the Government not to accept the proposals of the Opposition leaders, who were involved in the discussion and were equally important to the solution of the Punjab tangle.

And then again, the Prime Minister had accepted the same thing one year later. But then the situation went out of control. So my charge is that you could have settled it either, but you did not settle it. The Home Minister must make it clear why they did not do it.

But what did you do before this White Paper? Go through all debates. What you have said during these years in Parliament, is that in Punjab it is the Akali Dal movement which is responsible. You did not demarcate between moderates and extremists while we were demarcating that it is the movement based on certain demands – religious and non-religious. You accepted the religious demands. The Prime Minister had announced it at Bangla Sahib. But you never agreed to non-religious secular demands. But then you never said that there were four forces operating – may be somewhere they coalesce, somewhere they did not.

What you say today in the White Paper, you did not say it earlier. In the White Paper you mentioned Bhindranwale as the extremist leader. I want the ruling party members to quote from their debates that in this House they condemned the activities of Bhindranwale. Yes, I want it. It is my challenge. You quote that you demarcated it; you condemned Bhindranwale as an extremist leader. Yes, you quote him from your debates as an extremist leader who was out to destroy, who was actually selling this idea of Sikh separate entity. You never said it. You attacked the Akalis. You never made the distinction as if the Akalis were responsible for Khalistan, Akalis were responsible for all these extremist activities. But here, in the White Paper, I am glad that you have done it.

Every Indian should hang down his head in shame for what the extremists have done in Punjab – the killings, the murders, the smuggling of arms and the spreading of the cult of violence.

Members from the Opposition benches demanded that Bhindranwale should be arrested and that stern action should be taken against the extremists. But what was the attitude of the Government when we were demanding stern action? It was almost philosophical I still remember the face of the Home Minister – not your face but the face of the previous Home Minister. It was almost listless, philosophical.

...Who is responsible for encouraging the activities of the extremists? Let us go to the facts. If the facts are unpalatable for some, I would request them not to disturb me, because my job is to tell the facts to the whole country.

To conclude I would say that yours is a secular party. Why are you interfering in religious matters in Punjab? Keep religious matters within the religious leaders, but you are not doing it in Punjab. You are interfering even today. There is no reason why you are...

They have been ruling India for the last 37 years — the Congress, and today the Congress — I will explain to this House why you cannot keep the nation together, that was forged during the freedom struggle? That unity is being destroyed now. You are in power, you are responsible, it is your duty to keep unity.

In the end I will appeal that all Sikhs are not extremists; we do not support the actions of the extremists. They have got their legitimate grievances, their feelings to be assuaged. Let us all unitedly work together to assuage the feelings of our brothers, the valiant brothers who fought during the freedom struggle, who are also part and parcel of our existence. And I would request that it is the duty of the ruling party, since they are in power, to create a congenial atmosphere, to fight the communal forces, to isolate them politically and not to depend on administrative measures alone.

START A NEW CHAPTER

— Atal Bihari Vajpayee

Such a situation should not be allowed to develop again, a situation in which we have to send army into a place of worship against our own people. After all maintaining internal law and order is the responsibility of the police. The police can seek assistance of the Central Reserve Police or that of the Border Security Force. In Punjab, all these forces failed to control the situation and the army had to be called in. Why? Why did it become necessary to call the army? There was a Government in Punjab but such a government had to be dissolved. The Assembly is not dissolved but is in suspended animation. The administration is paralysed there. The police has become totally partial. A gulf has divided the people. Even ties or marriage and kinship are not able to bridge that gulf.

Deputy Speaker, Sir Governor Pande and (Inspector-General of Police) Bhinder have resigned from their offices. Such new issues are emerging everyday. Against how many officers has action been taken in Punjab? Against how many officers are there allegations

that they were in league with the terrorists? The White Paper is silent about all such matters. It were the opposition parties which first put forth the demand for bringing out a White Paper. We had wanted a White Paper which would thoroughly expose the whole affair of the rise of terrorism in Punjab in its true colours. It is not hidden from anyone that terrorism in Punjab had surfaced first; the Akali movement began only later. The White Paper also admits this. But the White Paper does not bring out the whole truth. It shows only half the truth. Why did terrorism begin in Punjab in the first place? Why was the situation allowed to become so grave as it did eventually?

Deputy Speaker, Sir, merely blaming the officers will not serve any purpose. It is the politicians who are the real culprits. It is the rulers who are the culprits. No one knew even the name of Mr. Bhindranwale before 1980. How did the small-time "granthi" (religious preacher) of the small village of Bhinder appear on the political stage? How did he become the initiator of terrorism? Deputy Speaker, Sir, the decision to call out the Army was taken on 5-6 June, 1984, I want to speak of 1980. The Nirankari Baba had been assassinated. The assassination was the result of a conspiracy. The assassination took place in Delhi. On 5 September, 1980 Delhi Lt. Governor Jagmohan sent a "Most Urgent DO" letter to Punjab Chief Minister Darbara Singh. The DO number was 287/LG/80. He wrote in the letter that the CBI was investigating the case and that notices had been issued against 20 persons. Against some, even non-bailable warrants had also been issued. And then the letter complained that despite all that the Punjab police was not extending any assistance to the Delhi administration. I want to read out a portion of the letter:

"Evidence has been collected to the effect that all the twenty persons against whom notices have been issued and the three persons against whom warrants have been issued either belong to Sant Bhindranwale Jatha or are his close associate/relatives and are hiding under his protection. That was the reason for requesting local police of district Amritsar to have the notices served and the warrants executed. Two more fresh non-bailable warrants are being obtained against the persons mentioned in the annexure. CBI are also in the process of issuing notices u/s 160 Cr. P.C. to Sant Jarnail Singh Bhindranwale."

The letter then goes on to complain that not only was the Punjab administration not taking action on the basis of those notices but

even the notices were not being returned to Delhi. The letter said that people had to be sent from Delhi to get back those notices. The White Paper mentions that Bhindranwale was arrested but leaves out the fact that he was released soon after. It is, no doubt, mentioned but nowhere it should have been. It is mentioned somewhere else in the document. Former Chief Minister Darbara Singh made a big speech in the other House yesterday. He knew that camps were held in Pakistan to train terrorists. The Chief Minister knew but not the Minister for External Affairs. Mr. Darbara Singh says that he is ready to provide evidence to prove that. If that is so, why has that evidence not been included in the White Paper. If the Home Secretary of the Government can talk of Pakistan's hand in the matter, why cannot the Home Minister? Anyway, I will talk of that later.

What happened on 5 and 6 June is not a matter to be proud of. We have, no doubt, praised the army men but that is because they endangered their lives. The army has to carry out order of the political authority. And today, it is those who constitute that political authority and who gave that order who are in the dock? Why was this situation allowed to develop? Why was Bhindranwale not arrested on 5 September? Jagmohan wrote a letter that Bhindranwale was arrested and then released. Bhindranwale said that he would decide when, where and at what time he could be arrested. He said that he would have a dip in the Golden Temple before his arrest. The police officers escorts him to the Golden Temple for the sacred bath. They arrested and then released him. The Government did not however arrest his followers and relatives. Who made Bhindranwale a hero? The Akalis, of course, are not innocent. But what the Government should have done was left for the Akalis to do. The Prime Minister told the leaders of the opposition parties that the Akalis did not tell the Government that arms were being collected inside the temple. Prof. Madhu Dandvate had then asked whether the Government had known that. Does it mean that the Government would know of such things only when told by the Akalis. The Government should have found out at the right time that arms were being collected in the Golden Temple and then condemned and censured the Akalis. The Akalis should have openly come out to oppose the terrorists. I have this complaint against the Akali friends. But can that cover the failures of the Government? Bhindranwale had once come to Delhi. Who were those two ministers of the Central Government who had touched his feet then?

....Sir, the army can be called to assist the civil administration but not to run the civil administration itself. What is happening in

Punjab? The whole administration is being run by the army. Is it necessary? Is it desirable? Are you thus laying down the right conventions?

Deputy Speaker, Sir there was a journalist who was stuck up due to curfew for 60 hours in Amritsar. He was then asked to secure a curfew pass from the Deputy Commissioner. The Deputy Commissioner no doubt gave him the pass but then while he was going back told him to get the pass signed by the army officers also. Why? Many a time has the rule of the President been imposed in many States. The army has also been called out many a time to assist the civil administration. But nowhere and never in the past have officers of the army been appointed advisers to the Governor and assigned such important departments as law and order and justice.

We had thought that the Government would initiate 'kar sewa' in such a manner as to fulfil its promise of applying a healing touch in Punjab. Now, how the 'kar sewa' is being conducted is there for everyone to see. This is not the way to apply a healing touch. This is the way only of further aggravating the wound. But I am talking of a different matter. When the Government talked to the SGPC about 'kar sewa' it was not Governor Satarwala who represented it but the acting army chief and General Oberoi. Could Satarawala not carry out this task? This tendency has not remained limited to Punjab but has spread over to Jammu & Kashmir now.

...Sir, it is true that many people have felt relieved after the army action but then just because of this they should not be considered opponents of the Sikhs or that of the "panth"...I also want to say that those who opposed the army action should not necessarily be branded as Khalistanis. This mistake should not be committed. Passions are rife. It was because of this that the Prime Minister had to speak of the healing touch. But I want to ask where is that healing touch? There were two opportunities for applying such a healing touch. One was when the White Paper was published. If the White Paper had been honestly composed; if even the bitter facts also were presented in the Paper — that might have led to the Government being placed in the dock but then what — then could have it served as a healing touch.

...Sir, it is one-and-half month since the army was sent to the Golden Temple and yet the terrorist activities are continuing in Punjab as are assassins. A Central Minister told me the other day that 500 terrorists are roaming all over in search of prey.

What has happened is that while earlier the terrorists were in the Golden Temple and the army outside, today the army is inside

the Temple while the terrorists are roaming all over outside. Terrorism has acquired a new dimension. The Bhakra Canal has been breached twice. A plane has been hijacked even after the army action. I cannot say whether terrorism has increased or decreased in Punjab. Terrorists have been arrested, and killed but the act of sending the army into the Temple has strengthened the ideological ground of terrorism... Today the society stands divided into two camps. Many Hindus are unable to understand why the Sikhs at large are so unhappy. Why did they not in the first place prevent misuse of the Golden Temple? Why were such large quantities of arms allowed to be stored in the Temple? Why are they now unhappy over the action taken? On the other hand, the Sikh community is not able to comprehend, why? because of the misdeeds of a handful of terrorists is the whole Sikh community being humiliated?

...Sir, thirty-six years after independence, the unity of the nation is again being questioned. This is not a favourable reflection on the rulers of the country. It is not a happy thing that we have not become a nation even until today.

EXPOSE FOREIGN POWERS

— *Inderjit Gupta*

In spite of some heat which has been generated in this debate from time to time, I think, if one reviews the debate dispassionately there are a few points on which, I think, unanimity has been expressed. There is no difference on those points at all from this side or that side. And one of the major points is that the Army action, Operation Bluestar, when it came on the 5th of June could not have been avoided further. If it had been avoided further, it would have led to a much bigger and dangerous tragedy.

The question that has arisen is could it have been avoided? A question was asked the other day at some Press conference of an eminent and well-known retired Sikh General, who is neither a Congressman, nor an Akali. He is General Jagjit Singh Aurora, the hero of the Bangladesh war. And he calls himself a non-political Sikh. You can call him whatever you like. But when he was asked and it came out in the Press because he had expressed unhappiness at what he had seen about the destruction inside the Golden Temple: I know my Sikh friends are not happy about the state of affairs. Nobody can be.

He was asked: In your opinion General, could this thing be

avoided? I very much liked the reply the General gave, because I think it sums up the essence of what we have been trying to say. He said: If you get a boil on the big toe of your foot and you neglect that boil till it comes and develops into gangrene on your knee, then if you ask what you have to do, the only answer is that you have to cut off your leg, otherwise you will die. I think that is a very apt way of putting what we are trying to say and which I think one should try to understand. Had a boil developed before it turned into gangrene? Yes, everybody here is admitting it that the boil had developed long ago.

The White Paper, on which our main criticism is there, has said many useful things. After all, White Paper's main purpose should be to educate the public of the country to understand what actually happened, what the danger was, from where the danger was coming.

On many of these questions this Paper is of course inadequate. And I do not expect the Government, after all, to be self critical to the extent that they will admit that so many opportunities did come at various times when, if you had the political will, you could have clinched something and forced these people to accept it because not to accept it would mean to be exposed before their Sikh masses.

I proceed from the assumption, and it is a basic assumption, which neither this side nor that side should forget that the Sikh masses in general are not to be identified with terrorists and are not to be considered as followers of Bhindranwale (*Interruptions*). I have said in my earlier speech in April that it is the Government which is turning the Akalis into the sole representatives of the Sikh community. I have spoken it here in this House. You forget your own Sikhs, even the Congress Sikhs. You forget the Communist Sikhs, you forget other non-Party Sikhs. To you the only representatives of the Sikh community were of the Akali Dal. I had made this charge on April 18 here in this House before the action took place.

You should keep these Sikh masses in mind, the farmers, lakhs of Sikhs in the villages. If you had kept them in mind, then the political leadership in my opinion should have followed a different strategy and that strategy should have been to try to isolate these terrorists from this broad mass of Sikh people who are not their supporters, to drive a wedge between the terrorists and the ordinary Sikh citizens and farmers, that is why we say that if on these four or five points which the Akalis had put forward among other demands, but which were not only Akali demands, but every Sikh feels for them -- after so many years, even today on the 25th of July 1984, he does not know whether Chandigarh is going to come to Punjab or

not, today there is no decision announced by the Government on that. The question of sharing of the river waters, the question of the other territorial areas over which there were some disputes – the entire Opposition and the Government has agreed on these points. In some meetings the Akali had even agreed.

Later on we told Madam Prime Minister, when the Akali leaders went away after those incidents in Haryana and they never came back again, and we had suggested that even if they did not come back, let the Government and the Opposition parties together at least on these 3-4 points, come out saying these are the decisions which we consider to be the just decisions on these questions and the Government is announcing them. This is what should be done. This is the only way by which the Sikh masses can be rallied to your side and not pushed into the arms of Bhindranwale and the terrorists. You did not follow that line.

You see only the Akali leaders and you don't see anything else. You don't see lakhs of ordinary Sikh people. And therefore, we went on like this, drifting, and drifting, and now in the Punjab the other day somebody said to me that Bhindranwale alive was less of a danger than Bhindranwale dead now. All those masses of people who were never with him may have been frightened, they may have been panicky, terrified, because of all these gun-trotting terrorists who were going around, killing innocent people right and left. But they were not supporting all these things at all.

In respect of all those Sikh masses today, I regret to say that there is no use saying here 'No, no. Only a handful of people had been affected.' It is not the truth, let us be objective. We are living in India, we are not living in some other country in a vacuum. We are living in a country, in a society where religion and religious sentiments and religious feelings and prejudices are a most powerful and potent factor. Now I am speaking I say all glory to them to you all good men of religion as an atheist.

I am saying and I will understand. I should not be able to understand, you should be able to understand better that to-day a vast mass of the Sikh community, after what happened in Amritsar, in Golden Temple, has become so bitter, angry and hostile. Is it not a great pity? It will take a long long time to assuage these feelings.

I say all glory to Sikh mass who refused to carry out Bhindranwale's order to kill Hindus. If you have heard the cassette of his speech which he was giving every day inside the Golden Temple, I have heard that cassette in Chandigarh. In that he was saying clearly that if security forces ever attack the temple, the first thing you must do

is to kill every Hindu in your own village. If you do not feel like doing it, then go to the adjacent village and kill Hindu there and then march to Amritsar to protect Harmandir Sahib. This order of his misfired completely. No ordinary Sikh anywhere had raised his hand against Hindu brother. Is it not a thing which for the future gives us great confidence and hope?

Of course, Hindu and Sikhs are very close to each other socially, in religious matters and in family matters. You know that. But he was inciting them to kill Hindus which would have set off the whole chain of communal frenzy and murder and the whole have led to large scale exodus of Hindus from Punjab. That is what the plan was. Let them run away from Punjab and spread stories and let the Sikhs run from there and come back to Punjab for shelter. But the Sikh masses did not respond. Their heart was sound on this matter. I say all glory to them. But the same man today is feeling so angry, hostile, bitter and humiliated because it is a country of religion.

Tomorrow, if the Army goes into a mosque or mandir, the same kind of reaction would go on among Hindus and Muslims. You cannot avoid it. Therefore, we have to be calm about the whole thing and be very sober and objective.

As far as the Army is concerned, I think the job that was given to them was done efficiently by them and with great discipline and courage. But I cannot forget for a moment that the ordinary Indian Jawan, whatever his religion may be, he is a God fearing man. The Jawan of the Indian Army doing his puja, his namaz is a villager in the uniform of the Indian Army. He is really a God fearing man. He was sent into the mandir. He carried out the order, suffering terrific casualties in the process. I doubt whether the Army of any other country could have carried out the same operation under similar conditions, the orders which were given. Any other Army would have just destroyed and finished the whole complex and raised it to the ground.

He would have been fired at even from the roof of Harmandir Sahib as it was felt they were in the open without any cover. So, anyway they did what they were ordered to do. We have paid tribute already to the sacrifice that has been made. But, I was upset, let me say, to find – and thanks to the courtesy of the Defence Minister – some of us were taken there less than a fortnight after this operation took place. General Sahib was also there with us. When we were taken to see the captured weapons, they were kept in Jalandhar and not in Amritsar. We were taken there. At least two big rooms full of these captured weapons were there. I also had an impression as

I think public has got, that the vast bulk of these weapons are foreign weapons which would have been smuggled from outside, there are a large number of such weapons also, no doubt.

But, as I have pointed out in one of the points of my Amendment, the origins of a large part of these weapons, the lethal and sophisticated weapons — I am not talking about handmade swords and that kind of weapons — have not been given and the majority of weapons like light machine guns, sten-guns and at least 50 per cent maybe more or less, of the rifles are our own, the equipment with which our jawans fight. Who is going to answer this? It is bad enough to have smuggled the stuff from across the border.

Is this not a danger to our country? The security of the country is in danger by the mere fact that a large quantity of weapons were found in the Golden Temple and were in the hands of terrorists. Who is to inquire into this? I hold the Government and the Defence Ministry responsible for it. If it happens in Punjab, it can happen in any part of the country. It means that serious leakages are taking place from our own installations, from our own ordnance depots and factories, perhaps, from our own units, in the Army. How could it happen otherwise? These weapons were used ultimately against our own troops when they had to go inside the Golden Temple. I demand an inquiry into this, not just covering it up like this.

I should say that one of the reasons why rumours were spread, not spread, but why the rumours were believed and many of them are still to believe, I regret to say, on a large scale in Punjab, is in my opinion, the pre-censorship of the press which is continuing till today. This has made the credibility of the Government media, official media, absolutely zero in the eyes of the ordinary people and they are driven to listen to BBC and all these things. This is the whole trouble.

We were told that two or three days before the military operation, all foreign Correspondents were turned out from Punjab. A good thing. But you see the *London Times* — I suppose you have been following these things — of the 14th June. I have got it with me here. On the front page, the *London Times* has published a report by a Correspondent of the A.P. claiming to be the only foreign newsman who was in Amritsar during the military operation. How was he still there if all the foreign correspondents were turned out from Punjab?

Shri P.V. Narasimha Rao : How do you know he was there?

Shri Inderjit Gupta: I do not know. But you are not contradicting anything. He has come out with horror stories which I do not want to repeat here. It is given on the front page of the *London Times*.

As the Prime Minister has said somewhere else correctly, the foreign media of all kinds — don't say, foreign media it is western media — the western media have been putting out all kinds of stories, horror stories and all these things. So, there should be more active contradiction of these things.

Another point which I wish to make is about what has been said by my colleagues here and resented very much by that side and that is about the origin of Bhindranwale phenomenon, how it arose, how it grew, how it was encouraged, how it developed, how it came to acquire a dominant position ultimately and what was the hand of the ruling party or some circles of the ruling party, let us say, behind it? I do not want to repeat all that. It is well known because he was being used...

I could give some more facts, but I will not have the time to do so, as to how he supported their candidates and they supported his candidates in the SGPC elections. Only one of the prominent Akali leaders who had ever opened his mouth and had the courage to say things against Bhindranwale and what was going on inside the Golden Temple was Mr. Umranagnal.

The news of that press conference addressed by Rajiv Gandhi I found in one newspaper. There he is supposed to have said about Shri Bhindranwale:

"He is a force of influence among the Sikhs."

Quite true.

"He is a religious person with no overt political ambitions so far".

An hon. Member: But he has denied it.

Shri Inderjit Gupta: No. That is something else. That is what he has said that he is an extremist and something and something.

"He is a religious person with no overt political ambitions so far."

This is how it is reported. If it is wrong you are welcome to say so. This was on 29th April. Quite recently. The White Paper has got here on pp. 163-64, two pages of quotations from Bhindranwale.

Shri Rajiv Gandhi: This was what I have said in the first press conference which was not fully quoted. What clarified was that I had said this — I do not remember the exact words now because it is a long time ago — but it is something like this that he does not have overt political ambitions but this method of functioning is not religious. The way he is killing the people, is not in line with any religious sentiments that we have in this country.

(Interruptions)

Shri Rajiv Gandhi: This was said to press conference in Bombay. What you are quoting from a press conference in Chandigarh is not properly reported.

Shri Inderjit Gupta: They never seem to have reported properly!

Shri Rajiv Gandhi: That is why I have clarified in the House.

Shri Inderjit Gupta: These two pages, 163-64, are quotations from Shri Bhindranwale's speeches and statements. If anybody reads those and if they were known-because he was making speeches **inside the temple** – then, let me say that it is not correct to say that he has no overt political ambitions. Please go through what the newspaper has stated about his speeches and statements and on what he is saying. My point is that he had acquired a certain status in the eyes of the Sikhs that he has become such a big leader that the Government is afraid to touch him and that he has been arrested and released.

(Interruptions)

Shri R.S. Sparrow: Not all the Sikhs, not majority.

Shri Inderjit Gupta: All right. Anyway, now he has become a martyr.

Some Hon. Members: No, no.

Shri Inderjit Gupta: I also wander about in Punjab. I have been three times to Punjab after the action. My party was not so demoralised and immobilised and so on or terrified, as somebody was saying yesterday that all political parties in Punjab have become terrified. We also stood up to them in many places and fought them. You know that.

Now what I am saying is that one should not have said and done things which only encourage him further and add to his image among the people. This is all I want to say. One or two more points and I have finished.

First, I must say this; otherwise, I will forget. In this long list of killings, names of many people, innocent people, who were murdered have been given, but I do not know why on page 134 – this is a slip, I suppose; but I should be corrected – referring to an incident of February 22, 1984, where four persons were killed in a bazar in Lopoke, District Amritsar, there is no mention made of that young man, Sumit Singh, Editor of *Preet Lari* after whose death both the President and the Prime Minister sent condolence message to his family; his name is not mentioned there. The bureaucrats to whom you entrusted this job of drafting the White Paper should be reminded of this.

Secondly, I refer to page 35. The bureaucrats who did the drafting could not suppress altogether a little bit of anti-Communist prejudice.

That has to be injected into this, that has to be injected somewhere. What does it say? It says:

“Dr. Jagjit Singh Chauhan...came to public life....”

What public life he came to, I do not know.

“....came to public life through the student wing of the Communist Party.”

Shri P.V. Narasimha Rao: I have clarified that it is only a statement of fact and that it means no reflection on the Communist Party.

Shri Inderjit Gupta: I want to know how it is relevant? Does it have any significance? In that case, do you want me to name the various people sitting on the Opposite benches who at one time were supposed to be either fellow-travellers or card-holders of the Communist Party? Should I name them? How is it relevant? (*Interruption*) How is it relevant to inject this here?

About the foreign connections, well, the point of view of the Government is this: “Though we know very well who these forces are, who these powers are, we do not want to name them”. The point is that you want to leave the public in the dark, they should not know from which quarter the danger is coming, whom they should be vigilant about. Who is it? Is it the Soviet Union? Dr. Subramaniam Swamy says that the Soviet Union has destabilised this region by entering into Afghanistan. Is that whom you are meaning Mr. Jayawardane? Is he trying to destabilise India?

Why don't you say who they are? Is it not a fact that those hijackers in the plane forced the passengers to shout this slogan: ‘Long live West Germany’? Don't you know it? And this Talwinder Singh who took refuge in West Germany after committing some crime here, you could not manage to get the West German Government hand him back here, although you handed back the two German nationals who were here. Nobody is so hesitant to name Pakistan. But we know who is the real power behind Pakistan, who is arming Pakistan, who is converting Pakistan into a military base. Many of those weapons I saw there in Govind Singh Fort in Jalandhar have got Pakistan markings on them. Of course, people generally in this country know that the Americans are playing a role. But you want to lull them into some kind of a thing. You selected just this time to allow our Chief of Staff to go on a visit to the USA. Gen. Vaidya could have gone at any other time....

Shri R. Venkataraman: I want to tell you that this visit was arranged several months back....(*Interruptions*)

Shri Inderjit Gupta: I knew you would say that; I knew you would say that it was arranged long ago. But here a traumatic crisis

has overcome the country sending shock waves throughout the people...

Dr. Subramaniam Swamy: Mr. Jyoti Basu also went to the United States.

Shri Inderjit Gupta: I think Mr. Jyoti Basu is not trying to attack your country from outside.

I ask you what will people think? When you are giving an expression to your friendly relations at this time by sending your Chief of Staff there, then, obviously these forces you refer to cannot be in that country. It is commonsense. How will an ordinary man take it?

About secret meetings. I only want to ask one thing. In three or four of the meetings I find one of the participants was Mr. Amarinder Singh. Of course, they won't tell us anything about the secret things. What was his special qualification for being there? Had he some special rapport with the Akalis? He was your MP. Once the Army entered the temple he resigned. So, why was he there? Was it because he was one of the aspirants of Chief Ministership? That is all we know about it. They won't tell us anything about all these things.

Finally, I will end by saying that we debate about the White Paper but we must say something at the end as to what we think should be done now. I will just summarise those things. Nothing – the Government has given no hint of it.

I proceed from the assumption that the dominant thing is to assuage the feelings of the vast majority of the Sikhs who reasonably or unreasonably are feeling bitter, hostile and religiously hurt and all that. Therefore, the first thing I say and our Party considered it, that as far as the temple is concerned – I do not say the temple complex, but as far as the temple, the temple proper and the *Parikarma* surrounding the temple is concerned, the Army need not stay there any more. They can come and stand outside, guard the entrance and all that. So long as they remain there I am told that they are now at least in the *Darshani Deodhi*. They are there. I think the functions they are performing now can easily be performed by some other agencies....

I will request the Government not to indefinitely prolong the stay of the Army inside the temple because it may be counter-productive in the long run. I do not say that there is no risk involved at all. Some one per cent or two per cent risk may be there. But can't you check that? As against that, it will be counter-productive to keep the Army there indefinitely and make people feel angry and bitter about it. That should be done.

Secondly, let her call a meeting again of all the political parties. Let us at least put our heads together consult what to do now. Let

some compensation be given to the people who were killed by the terrorists.

Let the pre-censorship be withdrawn....

I am saying: Let action be taken against all papers who write inflammatory or communal things, but let the pre-censorship be withdrawn....

Mr. Speaker: Everybody tries to ask the Government to take appropriate action at the appropriate time. Now I am trying to do something on my own.

Shri Inderjit Gupta: I am requesting you also. It is your State. Are you not worried about it? Some steps must be taken – all in good time. I will say people are listening to the debate outside and throughout the country. The Sikhs are also listening. They would like to know what steps the Government is thinking of. And after all it is over now and we have to see that things are brought back to normalcy though certainly it will take very long.

RISE ABOVE NARROW OUTLOOK

– Indira Gandhi

I thought in this debate in view of the seriousness of the subject and the gravity of situation, our hon. friends opposite will refrain from slanders and false accusation. I thought that prejudice would not colour their remarks. Obviously I am not painting everyone with the same brush. But it is true that some people have made accusations and these accusations are not new. They have been answered some on the floor of the House and some on other occasions. But the whole purpose of this debate – with apologies to some speakers – seems to be new, and this we see outside the House also, for an effort to shift the focus from the essentials to purely subsidiary issues with a view to create confusion in the thinking of the people.

Much has been said by some speakers about the elections. Sir, we are not obsessed with the elections. Unfortunately, the Opposition Parties and Groups and, even the two Members – I do not know whether it is groups or something other than groups – are obsessed; to accuse me and the Government of, allowing the crisis to build up merely for electoral advantage is a contemptible argument which needs no response.

Somebody spoke of the deafening silence. Deafening silence is not in the White Paper, deafening silence was maintained by those who to-day assume the role of the custodians of the interests of the Sikh community. Certain remarks which I heard – I was not in the

House but I was listening to every speech from my room — were far from responsible. Shri Inderjit Gupta just now said that we regarded only the Akalis as the representatives of the Sikhs. Sir, you yourself can think what basis there is in this. In the 1980 elections, when the Akali Dal was in power in the Punjab, who won the elections? The Congress Party won the elections. The Sikh members won the elections. The Sikh people voted for the Congress. How can we say that only the Akali Dal is representing the Sikhs?

Shri Inderjit Gupta: Because you only speak to them and you deal only with them.

Smt. Indira Gandhi: We dealt with them, and we met all the other Sikhs. I personally met all the other Sikhs, several Sikhs and several Hindus from Haryana and from Punjab who came to see me. They belonged largely to my party. They did belong also to some other parties. I do not know whether any Communist Sikhs came or not. But, certainly I had talks with the Marxist Sikh leader who was very close to the Akalis and who said that that was the voice of the Sikhs.

So, let us not get sidetracked by these things. The Congress has always fought communalism of every kind and, in this House — I am on record if you will look back to the papers from 1966 onwards — I am on record, how I have spoken against them; how I still am against any type of communalism, any type of extremism and today, communalism has a new dimension and it is called fundamentalism. Even those countries where fundamentalism is supposed to have started are now worried about it and are now trying to see how they can contain it. But, in our country, because they are discovering the ill effects it has on them, we have to fight it, all the harder, because our society is far more vulnerable and this fundamentalism, let me make clear, is not in any one community. I am not referring to the Sikh fundamentalism but to Hindu fundamentalism, to Muslim fundamentalism and even to Christian fundamentalism. Every religion feels that it has to take an extreme view and those who don't — you talked about Congress Sikhs, but what have the others been saying — are not the real Sikhs because they don't belong to the Akalis, because they belong to the Akali Dal. What do the Muslims say? Because these Muslims are Communist members, they are not the real Muslims because they do not belong to the Muslim League but to some other Muslim organisation. This is what our party is suffering from because we stuck to our ideal of secularism, because we have stuck to certain wider national goals and not confined them in any type of narrowness in the sphere of religion or in any other sphere

because we had thought that some basic Indian tradition; the Congress fought.

Imperialism and to-day, it fights neo-colonialism. It is no use making remarks because we have not named the country. I do not name any group and I do not name any of you. But, because you spoke just now, I took your name. Otherwise, I do not usually name anybody whether they are abusing me or whether they are praising me.

But our record on this, I do not think, anybody can challenge. Just because the Defence Chief has gone to America or somebody has gone to Pakistan because we try to find an area of cooperation, we try to increase that area – this has been the basis of our foreign policy from the beginning – it does not mean you don't know what those people are doing. It does not mean you don't tell them you know what they are doing.

Shri Inderjit Gupta: Should.

Smt. Indira Gandhi: We not only 'should' but we have. I have been told that this has been mentioned by people outside that here is one person who has said the same thing in any world Capital. I did not tailor it to meet the views of the particular country I happened to be in because.

Shri Krishna Chandra Halder: Praising yourself?

Smt. Indira Gandhi: What you mean by myself? I have said that it has been internationally acknowledged in some conferences. And today we continue this fight. In fact, some of our problems here are because we are continuing with this fight I think the hon. Member there and many others should be aware of this fact. And with all our faults – being human we have many faults and we do not hide our faults. Naturally we do not want to parade them although India parades its deficiencies, its shortages, its dearth, poverty everything far more than any other country does. But nevertheless we have taken the country forward in every possible direction. When I say 'we' I am not referring to myself. I am not referring to this Parliament. I am referring to the Indian people. It is the Indian farmer, the Indian workers, the Indian scientist and Indian technologist who have increased our productivity. It is the Indian Army which has secured our borders against foreign aggression. So, when I say 'we' I mean all these people. Sometimes the opposition forgets this. They want to believe everything that those against us say rather than what we are saying, we are not saying it on behalf of Government, but Government does matter because it is the government which gives the direction.

We do not swing from side to side like some people and some countries. We have set ourselves a steady course, the most difficult course of combining the best of the old with what we consider the best of the modern and in the face of the most tremendous odds and obstacles of every kind, to which I might add some of the hon. friends opposite sometimes contribute, we have not wavered. India has spoken and does speak not only for our people but also for the countless millions, the majority of the world population and we have been willing to step aside in order to help others.

Now, Sir, Professor Chakraborty, while concluding his speech yesterday said that the Congress having ruled the country for so many years forgetting the three years in-between were ruled by somebody else – therefore it was its duty to keep the unity of the country. Now, it implies that national unity is a party issue. Is that what he is trying to say? This is the manner in which it was projected. This is how it came out.

Shri Satyasadan Chakraborty: Just now, you have said that the government formulates the policy, and you are primarily responsible to keep the country together.

Smt. Indira Gandhi: National unity is a national issue and the responsibility of all political parties and all Indian citizens. The impression that I got when I heard the speech was that perhaps other parties can be free to play with fire but run away when the blaze gets too hot.

So for me and for my party, national unity and integrity are our supreme objectives and nothing can be allowed to come in the way of that, neither elections nor anything else. Now, what is happening in Punjab was not simply a story of cruelty or merciless violence against the innocent people. It was a concerted attempt by a combination of internal and external forces to encourage divisive forces and if possible, to divide the country. This was the challenge before us. I think it was another hon. Member who spoke before Lunch, who said that why army had not been sent to other places when there had been violence in other places, why this was done in Punjab. This situation in Punjab was an entirely different one although there are links with what had happened in other border states.

Now, the question of the foreign hand is also mentioned. This has been brought up earlier by everybody and we are asked for evidence. We are asked to name the countries, the people and so on. Now, we are not sitting in a court of law. We are dealing with historical forces and movements. We are fighting for our freedom. When we were fighting for our freedom did we have any iron-clad

evidence that communal riots were being created here? We could not have. But we did discover after freedom that there were and some of them were deliberately instigated. In fact, I have said this before in this House that the high official whom I met at the time of the Queen Elizabeth's coronation himself told me his role in one such communal riot.

Prof. Madhu Dandavate: They were ruling the country.

Smt. Indira Gandhi: That is not the point. The point is that even after colonialism, imperialism as such has gone, we all know of the views they hold about the developing countries, we all know what has been happening in other countries. We can only judge at this moment, we can only really guess. We cannot produce proof at this moment of what any body is doing. We can only judge from what is happening in other countries, what has happened in other countries. What has been acknowledged that it has...happened that is not...guesswork any more. It was guesswork in the beginning and I did guess some of it and I was hooted down, as I said in the other House, by my own party Members when I said something like that at the party meeting. Later, books appeared and evidence appeared that that had happened, and that was correct. So we can only judge by a kind of guesswork because of political experience, because of the knowledge of what is happening all over the world and we must recognise the nature of contemporary world forces. There are well documented activities of external agencies in other countries. The question before us is: whose interests are being served by casting doubts on the role of these external forces.

An hon. Member: Come to Punjab.

Smt. Indira Gandhi: Punjab is very much at the centre of it. That is I am mentioning.

Why should this collusion take place at this time? Links between communalism and neo-imperialism are deep-rooted. India is among the few developing countries. Today it is a democratic and secular State, India is also among the few developing countries to establish through planning which was at first so strongly denigrated in some parts of the world, a strong independent and self-reliant national economy. India is in the forefront in the movement for peace and disarmament. India's voice is loud and clear for restructuring the existing iniquitable relationship in international economy. India symbolises non-alignment and is a most positive force. Efforts to subvert our independence through open aggression, through overt and covert pressures have failed, because true to our tradition, the Congress did not succumb during the post-independence period to the pressures or blandishment of powerful forces.

So, now some other way has to be found to weaken India, and this is the true significance of events in Punjab. That is why, the agitations, in Punjab, a sensitive border State, the State with a dynamic economy, as also in other parts of India; all these may have different reasons, yet there is some link in them. Can we ignore the remarkable coincidence of troubles in Punjab with the re-arming of our neighbour? Can we ignore the strong revival of secessionist forces in Jammu and Kashmir and those in Tripura and the north-east border? In fact, not only Tripura, but we have that problem in the whole north-east.

As I said, some are willing to believe the good intentions of everyone else except their own Government. To them these events may have no connection, but anybody else will see that they are closely connected.

Now, the main point is—need the army have gone there, and how did we deal with the demands? A name has been mentioned, and he is now supposed to be a hero of the Sikhs. I do not want to go into this business. This has been refuted; there was no connection between any person there and the Congress. If the press or some people say that two MPs have won their elections because of him and so on and so forth, there is no truth in that whatsoever....(*interruption*).

This matter has been gone into yesterday and again today and I am not going to reopen it. But it has been very clearly stated that what the hon. Member has said is incorrect. There were internal quarrels amongst themselves. We know, they were visible even during the talks. And it is possibly, I think, I cannot be positive about this, but what I have heard is that some candidate of his was defeated by some other Akalis in their own elections, so to take his revenge, he thought, he would defeat that person, who had his men defeated or something like this. That has nothing to do with us. Anyway, the question is about the demands...(*interruptions*).

So far as the demands are concerned, I have made my views and my stand which is the government's stand very clear from the very second meeting at which the opposition was not present, the second meeting with me on the religious issues. When that meeting was over, they said, these are not the real demands; the real demands which had not been mentioned up till then were water and territories. Now, naturally, I said, if those were the most important demands you should have mentioned them earlier. We sat for 2 - 1/2 hours today; we sat for, I do not know, 2 hours on the previous occasion; and at that moment, I had some public function and I had to go. So, from then on, religious demands were pushed into the background and these two came forward. My stand on these has been categorical.

I have stated time and again and I think Mr. Chavan or somebody spoke here – that Chandigarh we said would go to Punjab.

Shri Inderjit Gupta: It should have gone by now.

Smt. Indira Gandhi: It could not go unless Haryana got something in its place. Well, this is what we could not get any agreement on and they were not willing to talk to the Haryana people.

Now, the question is that originally we had said that Fazilka and Abohar should go to Haryana, but one Punjab said, they wanted that, the question was what would Haryana get in its place. Punjab said that we should give money for a new Capital.

We have no objection. We said we would share it with Punjab, but we felt and I do still feel that Haryana should get some compensation in land.

Now, this is my view, which does not mean two or three villages which Haryana would get anyhow. This is the thing which Bagriji must have also seen. He will know it. Now, we could not have a solution by starting an agitation in Haryana simultaneously. Therefore the two things have to be balanced.

An hon. Member: It was engineered.

Smt. Indira Gandhi: It was not engineered. It was very well controlled as soon as it broke out. It was tragic occurrence and we were deeply – was deeply distressed that our Sikh friends should have been harassed, their turbans had been taken down or whatever was done. But as soon as we heard of it we took the strongest action and from then on it did not recur at all. But I am not referring to that demand. Had we made a declaration that Chandigarh will go to Punjab but the Haryana matter will be hanging, then there would have been trouble in Haryana. This is what I am trying to say. But I am not concerned just now with those demands that were discussed. I am concerned with the demand that was not discussed, which is the Anandpur Sahib Resolution. The Opposition parties were not able to convince me that the Akali Dal had given up the Resolution entirely. All I was told was, “they will not raise it now”.

Shri Harikesh Bahadur: Why should they give it up?

Smt. Indira Gandhi: Now he is saying, “Why should they give it up? Please see the significance of that. Now: What is the Anandpur Sahib Resolution?”

Shri Frank Anthony: Mr. Longowal had repeatedly stated it. May I just make it clear? He repeatedly stated that the Anandpur Sahib Resolution was his minimum demand. He had said it repeatedly.

Smt. Indira Gandhi: Whenever they were asked about this, they said, – I do not know whether they used the word ‘minimum’ – but

they said that they had not given up the Anandpur Sahib Resolution. Furthermore, I can go into details, that when I asked the opposition people who were present at the meeting about this they confirmed this matter that it was not given up, but it was only shelved. Shelved for how long, they could not say, whether that could be for three months, six months or one year.

Now, in these circumstances I did not see any point in my announcing or the Government announcing that it agrees to give this? But what is happening in return? They were not willing to accept that there was terrorism from the Golden Temple. Vajpayeeji said that I asked them if there were arms. I did not ask them. The then Home Minister wrote to them saying that "we have information that there are arms, we have information that in such and such a room such and such wanted person is staying, so please hand over, so that we do not have to take any action." And that is why we said here again and again that we do not want the Police to go in, that we do not want to interfere in any way with religion. It is only when we came to a dead end that this action had to be taken.

One word about Anandpur Sahib Resolution, and the letter and after my colleague Mr. Sethi made a statement here, in which he said that they were changing their demands, or something like that, he had a letter from Shri Longowal asserting that they had at no time given up the Anandpur Sahib Resolution and then he says that....(*Interruptions*)

Shri Inderjit Gupta : Why did you not include that in this?

Dr. Subramanian Swami: That should have been included in this.

Smt. Indira Gandhi: Apart from the endorsement of the Anandpur Sahib Resolution in the presence of the Janata Party leaders in Ludhiana in 1978,...

Shri Inderjit Gupta : What is the date of that letter?

Smt. Indira Gandhi: May 1st, 1984.

Shri Inderjit Gupta: Why did you not include it in the White Paper?

Smt. Indira Gandhi: So, this means that the Janata party accepted it then.

Shri Mani Ram Bagri: Who was its leader then?

Smt. Indira Gandhi: Whoever was associated with it then.

And therefore, they said that the terms of the Sarkaria Commission were far short of the demands of the Akali Dal.

Now, there is also much talk about who is moderate and who is not....

Prof. Madhu Dandavate: Are you referring to that on page 73 of the same document which you have produced? There is the commitment of the Akali Dal to the integrity and the unity of the country.

Smt. Indira Gandhi: I am not referring to any document. I am referring to a communication received from Shri Longowal.

With regard to the leaders of the Akali Dal I am told that in July, 1981 Shri Tohra, President of the SPGC and Shri Gurdial Singh Ajnaha, Head Priest of the Akal Takht went on a tour of the UK and USA. We have reason to believe that they established contact with the proponents of separatism. I do not want to take their names, because you know the people who are prominent in that movement now. From the Talwandi Group, the General Secretary and the former Minister in the Badal Ministry is reported to have sent an application to the United Nations for associate membership of the UN for the Sikhs as a nation. So far as I know, as I said that I could be wrong on the earlier date, this application was more or less at the time of the visit to these countries.

We know how the Akal Takht and Golden Temple complex was being used. And we know that first there were denials of it. Soon after the Army action when I sent somebody to the Golden Temple, one of the important persons there had said that he was in charge of the Akal Takht and that for four months he had not been allowed to go there. He was in the complex but he was not allowed to go there.

We have heard just now of the feelings of the Sikhs. When I went to Amritsar, several people of my Party went round the city, because I was closeted with some of the authorities for briefing and so on. They met a number of Sikhs. In fact, they tried to meet more Sikhs. They also met Hindus and others. One taxi-driver said: "You people who are not living in Amritsar have no idea of what we have been through." He said: "I am a Sikh; I am a Jat Sikh. I am not basically a political person. I do not belong to any political party. But when I left home in the morning, my family did not know whether I would come back in the evening. If there was a noise near the door, we did not dare open it." This is long before the Army action. This was the atmosphere. The farther you go from Amritsar you find the atmosphere changes because they did not know what was happening there. This was the situation. You say: "Did the Government fail? Well, to some extent, obviously if you have to do this, it is sort of a failure. But what is the reality of the situation? Because in our Police force, they are largely based on the majority community of the State.

This is where it becomes difficult for them. It is not that they all agree with what is happening but they are pressurised, their families are threatened to be killed, not just they. Anybody who tried to help, to find the terrorists or who gave information was killed. His family was threatened; his family was killed.

Some days ago, just before Parliament opened, two Sikh women came to see me. They said: We have been here for a long time we wanted to see you but we were not allowed. I said: Well, did you contact anybody? They said: We do not know whom to contact. And finally, they thought of telephoning. They telephoned in the evening. They were given appointment the very next morning. One of them said she was living near the Golden Temple. Three of her sons were killed in front of her. She said: 'I am an old lady. I have three daughters-in-law to look after. I have so many grand children to look after. I dare not go back, I do not want to go back to Amritsar. I have been born there, I have been brought up there. I do not know any other part of India but I do not want to go back to Amritsar. Please give me some place to live in Delhi or anywhere else.'

These are the things that were happening there. So; this sort of a situation came when in spite of the best efforts, the police was not effective any more. And this is not peculiar to Punjab. We have seen this happening in Assam, for instance. I referred the other day to the language riots. I was not in the Government then but I was sent as Head of a Committee on behalf of my party to look into. The question there was not of Hindus *versus* Muslims. It was between Hindus and Muslims who spoke Assamese and Hindus and Muslims who spoke Bengali. What did we find? In those districts where the officers were Sikhs or where the officers came from South India, there was no trouble whatsoever. But where they were two communities, either they were so terrified that they could not do anything or if a Bengali uphold the just case of a Bengali, they would say : 'No' he is a Bengali, therefore, he is supporting him. And I must admit that even some people who are here with me, who were Bengalis, whom I thought were well above all these sorts of in sessions, even they say: 'When an Assamese says something, how can you believe him? He is supporting his own community.'

So, this sort of atmosphere is a terrible atmosphere and this is what we have to battle together. It may not be done just by the Government. And this is why the proposal has come from all minorities and it came during the meeting of the National Integration Council – the very first one in Srinagar. I am sorry that we have not really been able to act up. Something has been done but I must confess it

is totally inadequate, to induct more minority people in the police and other forces, whoever is the minority in that state. In Punjab it is one situation, in U.P. it may be another situation, in Kerala it may be a different kind of situation. But whatever it is, this is why the people have confidence in the Central forces rather than in the police. It is not that we want to interfere, that we want to send the Central forces, but the situation is created in which the confidence is only on somebody who comes from outside and that person may be threatened but his family cannot be threatened. Here they say: All right, you do this now. What will happen when the people go away? People say, send the army out. One or more incidents may take place but the thing Chavan Ji mentioned or somebody mentioned – that is not the case now. I do not want to say that the army should stay there permanently. Of course, it is not going to stay. It should come out as soon as possible but we must, in the meantime create the conditions in which the people there feel safe, not only the Hindus but a large number of Sikhs. They may say so publicly or they may not but they have privately said that because we were against this extremism, we are being threatened now. There is no day when I do not get letters, with photostat copies of these threatening letters which people are receiving in Punjab.

There is no doubt that.....

Shri Satyasadhan Chakraborty : Withdraw from the Golden Temple itself.

Smt. Indira Gandhi : It is already out from the main area; it is outside from the *Parikarma*. Now a new situation has arisen, which you also mentioned, of *Kar Seva*. We are trying to talk to every different group. It was our information, they said "we do not want to repair the Akal Takht we want to keep it as a monument for the future, for the people to see." I think you people can very well understand that, if it is kept as it is, will it not increase the bitterness day by day? This is the problem. Therefore, we said that if one group is not willing to do it, well, somebody else should do it; whoever is willing to do it. Frankly I say that if nobody else does it, then the Government should do it. But it should be done. After that, if they want to break it, that is their business. But, if it is broken because of our action, then we should see that it is repaired, it is left in the condition – not in the condition in which we found it, because the condition in which we found it was full of terrorists and full of arms; I do not mean that past – it should be building which is as beautiful, as strong and complete as it was. This was our only motive in trying to encourage it. I do feel that the sooner this work is complete, the sooner it will be possible for the army to go.

When one man takes courage, and it requires a lot of courage in the face of threats to go there – if one takes courage in his hands and says “I will do it”, he is entitled to some protection. Therefore, we cannot say: no, you remove people. People were allowed in the Golden Temple earlier; they went in thousand and thousands. I do not know what the exact situation today is. But it was said that suppose people go in large numbers now and if nothing else, the women squat and say “we will not go out” it will again create a situation. So, until some of the building work is done, until then, full protection must be there.

But, even now the army is not in the main areas. They are not in the Harmandir Sahib; they are not inside the *Parikarma* they are out.

Shri Inderjit Gupta: They are in the *Darsini Deori*.

Smt. Indira Gandhi: They may be; I do not know. They may or may not be. I said they have to be in a position where should the trouble arise, they can go and help and save the people.

When we were talking about *Kar Seva* some people said, “No, the army must go completely out” and ultimately they said that they can be on the top of the gate. Now what can they do from the top of the gate? They can only shoot. If they were put somewhere on the ground, they can stop the people or do something less drastic. These are some of the points. If one goes into all the details, it will take hours and hours. These are some of the important points which have to be understood.

I am exceedingly happy that here people have praised the role of the army, the courage of the army. But someone else – I think somebody here said that he is a member of our party; he is not a member of our party – has made a rather derogatory statement in the other House. I know that we are not supposed to refer to it; but since I have already spoken there and will not get a chance to say there, I must say that this was not something that is conducive to bringing back harmony or the national good.

There have been people earlier who have tried to denigrate the police. I spoke just now why the police was not effective. It is not just that they were terrified. But when all the time you are trying to denigrate authority, you cannot, at the same time, expect people to obey authority. They are two contradictory things. You speak all the time strongly against the police. Then the police say “if this is so, why should we do something? If anything happens, the onslaught is on the police or on the para-military forces.” It is equally demoralising to them, as an open attack is. The reinstatement of people who have

been dismissed because of sabotage or some other thing, that demoralises the police.

So, these are many factors which create exceedingly complex situation. The army had a very difficult task to do and they did it bravely. We have praised the Army on many occasions, not only for their work in war-time, but also for the very efficient selfless work they do in peace-time. Some of our Jawans have lost their lives or limbs in the course of food dropping in the North-Eastern area or when they worked in flooded areas. We do not want to use the army on every pretext or make them do the work of the civilians but there are certain tasks which they have to.

As I said, the situation in Punjab was not an ordinary situation. It did go far beyond and any normal agitation or normal violence and crime.

Somebody spoke about the Sant who is now guiding the Kar Seva and about his attitude towards the Granthis or whoever issued order against him. But a Columnist, who cannot by any stretch of imagination be accused of partiality for my government or for me personally, wrote in his paper that the SGPC Chief had over-ruled the priests objections and allowed the terrorist leaders establish themselves in Akal Takht and convert it into an arsenal. So, these were things which were happening.

Some Hon. Members have said, why did we delay the action. It seems one cannot be right, no matter what one does. We delayed it precisely we did not want to take it because we wanted some way out, some kind of understanding which would include the throwing out of terrorists, dismantling of the arsenal and of something which threatens our country's unity and integrity. It is because we were trying for that till the very last moment, that we did not do it earlier. But when we came to stage when we felt there was no other way, we had to ask the army to go in. I did not choose the day. I suppose various things were taken into consideration when it was chosen.

Again you see they spoke about the present hero and there was some effort trying to separate him from the Akali leadership. But I think the Opposition leaders, at least those who sat on at the talks, very well knew that the very first demand of the Akali leadership was for Bhindranwale's release.

(Interruptions)

Shri Chandrajit Yadav : He was released earlier than that. It was not in the tripartite meeting.

Smt. Indira Gandhi: It is in the White Paper also.

(Interruptions)

It is in the White Paper. Here you all are criticising the White Paper. You are telling us it does not have this and does not have that, but it seems to me that you do not know what is there in it.

Shri Chandrajit Yadav: We have seen it.

Smt. Indira Gandhi: Then how do you say that you do not know about it?

(Interruptions)

Smt. Indira Gandhi: Anyway he was not released by us but by the Court, but that was their first demand.

Shri Chandrajit Yadav: Yes, it was a demand, but it was not in the tripartite meeting.

Prof. Madhu Dandavate: Madam Prime Minister, along with the minister I was present in all tripartite talks and at no meeting any representative of the Akali Dal demanded the release of Bhindranwale.

Smt. Indira Gandhi: Well, they did so in writing then.

Shri Chandrajit Yadav: But the Government had released him earlier.

Shri A.K. Sen: The court had released him.

(Interruptions)

Smt. Indira Gandhi: Now, it is mentioned in the White Paper. That is what I am telling you that you do not bother to read it and come and make comment on it here.

Prof. Madhu Dandavate: I am telling you that it is wrong.

(Interruptions)

Smt. Indira Gandhi: I strongly deplore the remarks made by the hon. Member opposite about saying that India is many nations. India is one nation. It was one nation and it will remain one nation. *(Interruptions)* I hear when he said that.

Shri C.T. Dhandapani: No, no, I want to correct myself. I did not want to say 'many nation'. I meant 'one nation' *(Interruptions)*.

Shri Sunil Maitra: Madam, that may be the political view of so many political parties in this country. What objection can you have? In spite of these things, political parties do assert that it is one country and shall remain as one country.

Mr. Speaker: That is what she said.

Smt. Indira Gandhi: That is what I am saying.

Shri Sunil Maitra: But how can you object to somebody telling that India is a country of so many nationalities?

Smt. Indira Gandhi: The word 'nationality' may have many many meanings, but I am afraid it is dangerous word to use.

Shri Mani Ram Bagri: India is one nation, one country.

Smt. Indira Gandhi: All right. But it is true that in some Communist countries they do use the word 'nationalities'.

Shri Atal Bihari Vajpayee: That is why you used this?

Smt. Indira Gandhi: I did not use it. No, no I never used it. I did not use it; I do not approve of it, let me make it very clear here. But the Akali leadership was using the word '*quam*' because we have always used it to mean 'community'.

And there is no question of there being different nationalities in India. We are all one nation, we are all Indian citizens, and as I understand, the word 'nationality' means different citizenship. But I am not bothered about the dictionary meaning. (*Interruption*)

It may be wrong. If you mention it in any....

Mr. Satyasadhan Chakraborty: Mr. Speaker, Sir, she has been wrongly tutored. 'Nationality' and 'community' are two different things.

Mr. Speaker: You were too young at that time to teach us.

Shri Satyasadhan Chakraborty: 'Nationality' and 'citizenship' are two different words. (*Interruption*)

Shri Somnath Chatterjee: How can a foreign national become a citizen?

Smt. Indira Gandhi: Why not? You take Indian nationality. Then you become a part of the Indian nation.

Shri Somnath Chatterjee : He becomes an Indian citizen, he does not become an Indian national.

Smt. Indira Gandhi : He does become an Indian national (*Interruptions*). Let us not get bogged down in semantics here.

We must, all of us and this is the responsibility of all parties and all citizens of India, heal whatever hurt is there. I know that not only our Sikh friends but all of us.

I myself was deeply pained in taking the action. You can ask my colleagues what I went through. Perhaps, this is the first and only time in my life when I did not sleep. But I felt that it had to be done in the national interest. And today we have to see how we bridge, whatever charms have been created, whatever distances have been created between one community and another. That is the foremost.

We have to fight communalism of any kind because that is the greatest danger to our unity.

Now, where did this cry of separatism rise? It did not rise in India. It rose far from our shores from people who are affluent. Some may be wanting citizenship of other countries. Some may feel that this will bring them some advantage and many are citizens of countries. This is where this cry arose. Whether there were pressures or suggestions from others. I do not know. But this is where it goes

and this is where it is strongest to day. So, we must meet this as a nation. We must meet this as one people and not as I said being in party politics or this or that.

Some people feel alienated. The Sikhs feel alienated for some reason. Other people feel alienated not because of religion but because of economic reasons. There are many reasons for alienation. There are alienation only because some people suddenly become rich. They become alienated from the places from where they were before. There are all kinds of alienation. Our effort is to try to have a balance in the country so that we can go ahead with our programme and not only strengthen, but consolidate the unity to go ahead strongly on our accepted path of socialist development. We have to revitalise the tradition of our national struggle. We have to move the entire people. This is where we have to have a massive movement – movement for unity has to be created: just as during the freedom struggle and even after the freedom struggle my father said : “Freedom is in peril, defend it with all your might”, this is what we need today, to revitalise the tradition of our national struggle and to move the people by a vision of a new society based on equality and social justice.

Appendix-30

Jethmalani Report on Delhi Riots

Politics of Criminalisation

Ram Jethmalani, was among a Group of 35 Lawyers who had taken out a procession in riot-torn Delhi in an attempt to restore peace, laying the blame for the violence squarely at the doors of the Government and the Congress (I), Jethmalani discusses what he saw. In this Exclusive Report for *Surya India* those who collaborated with him in this report were lawyers: Rani Jethmalani, Kamini Jaiswal and Laila Kabir.

On Friday, November 2, 1984, a group of 35 lawyers assembled in the Supreme Court Library to take stock of the increasing reports of violence in the capital following the assassination of Prime Minister, Indira Gandhi. All the lawyers present were unanimous about the urgency of visiting the areas affected, to make a first-hand report and if possible, to soothe feelings and restore calm in all sections. Several Human Rights activists participated in the meeting, including V.M. Tarkunde, Soli Sorabji, F. Nariman, Anil Dewan, Govind Mukhoti, Kapil Sibal and Ranjan Dwivedi. Among the women lawyers who participated were Kamini Jaiswal, Lata Krishnamurti, Bhushan and Rani Jethmalani. It was decided that the lawyers would go in a procession and would as far as possible keep together since it was important to show group solidarity with the victims of what was undoubtedly an orgy of violence and recklessness.

The first halt was at Shakarpur. Two or three helpless policemen with batons in their hands stood by outside the area that had obviously been witness to some ghastly scenes. The skeletal remains of several

buses that had been burnt were only too visible. A gurdwara had also been demolished. A crowd consisting of people from the area looked at us suspiciously and enquired why we had come. We explained that we had come only to restore a sense of sanity and calm and preach tolerance and peaceful co-existence. The crowd consisted mainly of Hindus who informed us that they were protecting the colony from violence, which they had been subjected to, the previous evening, when hordes of goondas and ruffians invaded their locality to wreak inexplicable havoc and destruction.

It was evident that there had been no victimisation by the Hindu neighbours and the violence was the work of outsiders who had been manipulated to demonstrate muscle power and their potential for destroying the Sikhs who lived in the area. We were assured by the local residents that they had every desire to protect their Sikh brethren and that they shared with us a sense of concern and compassion for them. We enquired from the policemen why they had not protected the vehicles from being burnt. We were informed by the police that they had only batons to protect both themselves and the residents and in the absence of any other assistance from the Govt. there was very little they could do in the circumstances.

The group of lawyers made their way in their procession of 8 cars to Pandav Nagar East. Here there was an uneasy truce between the Hindu and Sikh residents. The Hindu residents had been instigated by the local Congress-I elements into a frenzy of resentment and suspicion against their Sikh neighbours. There was however no evidence of a break-up of violence in the area. What was palpably felt by all of us was the underlying tension which could be ignited into a holocaust of hate and revenge by irresponsible elements. The Hindu residents showed their fear of the Sikhs who had taken refuge in an unconstructed Gurdwara. We were taken to the Gurdwara which housed about 50-60 Sikh men and women. The Sikhs looked visibly terrorised and the faces of all the women were haunted by fear of reprisals. The Sikhs in the Gurdwara expressed their gratitude to the lone police officer, Vinod Sharma, who was very much visible in the Gurdwara. He had an unusual presence of mind, found lacking in every other police officer that we met. He had taken the *kirpans* (swords) from the Sikhs and kept them in the custody of the S.H.O. at the police station and had assured the Hindu residents that they need not fear any attack from them since they were defenceless. It was this that brought about a feeling of security and restraint and prevented the outbreak of violence. Across Pandav Nagar we were taken to the Gurdwara where charred bodies of a few Sikhs were visible. While

we were at this Gurdwara, a journalist who was cycling back from Vinod Nagar East informed us that we should go to Vinod Nagar where there had been a virtual genocide of the Sikhs.

As we turned into Vinod Nagar, an unidentified body was lying across the road. A few passers-by who were present, informed us that the body was of a Sikh who had been shaved and burnt with kerosene and that he was a resident of Vinod Nagar. We made our way into Vinod Nagar which consists of a row of cheaply constructed houses divided by a small kuchha lane. Charred bodies were visible in the lane. On closer scrutiny the bodies were unmistakably of the Sikhs, the long hair had been cut and was lying around the bodies, iron rods had been pierced through their back and they had obviously been burnt by kerosene or petrol. A male corpse was lying in the verandah of every house tears rolled down the cheeks of women and children, who were too shocked by the sudden tragedy and violence that they had been subjected to the previous evening.

An inconsolable woman with her child narrated how mobs of hundreds had entered the house and despite all her pleas for compassion had killed and burnt her husband, taken away her gold earrings and bangles and her few worldly possessions consisting of her clothes, utensils and radio. This story was narrated to us by the residents of each house in that Basti. The mobs had come from the Resettlement colonies. Some of them were identified as belonging to the *Gujjar* community. A few of the Sikhs who had been burnt were drivers employed with the ITDC. A woman in the field nearby sat gazing at the sky since in the carnage and orgy of violence she could not find the body of her husband. We informed her that there was a body across the street and took her across to identify it. She discovered that the body was that of her husband. The lone male Sikh survivor in the whole Basti sat bleeding on a *charpoy*. His hair had been cut by the mob. Our enquiries revealed that he had been spared due to the courage and fortitude shown by his wife who had thrown herself on his body to save him from the anonymous persecutors and in the process had herself been seriously wounded in her eye.

Five other women had gaping wounds which needed immediate medical attention. All of them were immediately put into a car and escorted by Rani Jethmalani who took them to the Ram Manohar Lohia Hospital where Members of Parliament are permitted to bring their staff and families for medical assistance.

Hostile mobs were present throughout the city as the car sped with the injured to the Willingdon Hospital. The terrified lone Sikh male in the car covered his head lest he was identified. The five Sikh

women who had been traumatized by the senseless violence, the previous evening, were a picture of courage in spite of the irreplaceable loss in their lives. They recounted the brutal manner in which their husbands died and the degradation and humiliation that had been inflicted upon them. Imbecile mob while cutting their hair had jeered and mocked at them chanting 'Mona, Mona, Mona' (Shaven Sikhs). They had then been ordered to keep dancing while the mob laughed wildly, threw kerosene at them and gloated at the human bodies who were shrieking in horror and pain. The women who wanted to save them were prevented from doing so and had to stand by as mute spectators at the awful and shocking spectacle. Some of the women said that they could identify their persecutors. All of them stated that the mobs had been led by politicians belonging to the ruling party.

At the Ram Manohar Lohia Hospital they were subjected to further trauma and humiliation. The Medical Casualty Officer I/c, Dr. Ravinder Mohan enquired where the patients had been brought from. On being informed that they had been brought from Vinod Nagar East, where there was no police or medical assistance, the Doctor expressed his regret and inability to treat the patients in view of a Govt. Circular which had distributed medical work District-wise among various hospitals. The victims would, he stated, have to be taken to Swami Dayanand Hospital. Rani Jethmalani insisted that the Govt. Circular be shown to her. Eventually, a Circular dt. 9 May '84 No. 10/30/82-H.P. II of the Delhi Administration (Home) (Police Deptt.) was shown to her. The Circular stated that there was to be a Zonal distribution of "*medico-legal*" work among various hospitals. The distribution was according to the Annexure to the Circular. Rani Jethmalani informed the C.M.O. that the Circular was not applicable as it only dealt with "*medico-legal work*", and in any case the Circular dated 9th May could hardly apply to the compelling and urgent emergency situation in November, 1984 and that Doctors were expected to exercise their discretion on humanitarian grounds. All these pleas fell on deaf ears. Jethmalani drove straight to Dr. Jain's Medical Clinic, a private clinic, at South Extension where she obtained immediate assistance.

On November 3, the lawyers visited Pandav Nagar again to ascertain whether the Sikhs who had taken refuge in the Gurdwara were safe, in view of the tense conditions prevailing during their visit the previous day. The Hindu residents in the area told us that the locality was calm and peaceful and that there had been no incidents of violence. Some of the Sikhs in the Gurdwara appealed to us that in Ganesh Nagar East near the Mother Dairy, there were two houses belonging

to the Sikhs in a Hindu row of houses and whether we could bring the families to the Gurdwara for safety, since they feared that mobs from outside may attack Sikhs who were in a minority in the area. The lawyers' group went across Ganesh Nagar where the only two houses belonging to Sikhs had been fortified with a few cobble stones and broken bricks for protection. Inside an ill-ventilated room in which the windows and shutters had been put down, a family of 12 Sikhs including several young children lay huddled beneath several blankets to prevent detection by hostile mobs. In the adjacent Sikh house a *Sardarni* who had paralysis was hiding herself in her kitchen for obvious reasons. The family consisting of 12 Sikhs was relieved at the offer of assistance for being taken across to the Gurdwara at Pandav Nagar. The other Sikh family did not wish to leave. We escorted five Sikh children and a few women to the Pandav Nagar Gurdwara.

This innocuous "rescue operation" did not go unnoticed by the Hindus in the colony, or of the local Delhi Pradesh Congress (I) Vice President, Padam Sharma, who was patrolling the area in a Govt. car. While the Hindu residents had not reacted to the "rescue operations" hostilely when the children were being escorted into the Gurdwara, our emerging from the Gurdwara to leave for Pandav Nagar and to go to Trilok Puri from where we had received information of gruesome massacres the Hindu residents had in a matter of 30 minutes, been instigated and provoked by Padam Sharma, against what was considered an encroachment by Sikhs to swell their numbers in the area. Padam Sharma wanted to endear himself to his Hindu constituents that he was their protector and saviour against Sikhs who had been fortified by lawyers. He took pride in the fact that Sikhs were at his mercy and it was within his political clout to subject them to terror if he so desired. In a matter of a few minutes, the crowd had been provoked into violence. Rani Jethmalani with Laila Kabir in her car was stoned by the crowd. She got out of the car to plead that the Hindu residents were for peace and tolerance and that Hindu Dharma did not visualise such insensitive cruelty to their fellow human beings. The crowd jeered at her and threatened to beat her if she did not get out immediately. Rani Jethmalani stood her ground and told them that she would not be intimidated by this madness and she was willing to take the consequences of their unthinking and cowardly reaction. Suddenly sticks and stones were thrown in the area. Both Laila Kabir and Rani Jethmalani were persuaded by the women in the locality to take shelter in their homes. It appeared that the women had not forsaken their sense of passion and tolerance.

In the other part of the colony, Ram Jethmalani experienced a similar reaction from the Hindu residents. Jethmalani sat down on the ground, undaunted by the threats of being killed and subjected to violence. He reasoned that the Hindus should not be manipulated by Congress (I) politicians who were very visible in the area at that time. In the meanwhile, Soli Sorabji and a few other lawyers took their cars to the police station. Sorabji could draw no response from the police officers. He stood in the middle of the road and compelled an Army truck to stop and appealed to the Army officer to send a jeep to rescue the lawyers who were a target of mob fury and violence. Fortunately, Soli Sorabji was successful and a jeep was sent to rescue them.

The visit to Trilok Puri had to be aborted as the lawyers, scrambled into the jeep for safety, to take stock of the situation and to decide the next step to restore peace and amity.

A meeting was held at the residence of M.M. Tarkunde, Chairman, People's Union for Civil Liberties. It was decided that a delegation would meet the Home Minister, Narasimha Rao, to apprise him of the need for urgent action to prevent a holocaust that would further destroy the nation. In the evening the delegation without an appointment drove to the house of Narasimha Rao and informed the Home Minister that on the data made available to the lawyers, there had been an orgy of violence, loot and arson by those who were in no way sympathising with the assassination of Indira Gandhi, but were only using it as an excuse to plunder and enrich themselves. The Home Minister was informed that from the reports given to the lawyers and the eye-witness evidence of the lawyers who had visited the scene of tension and violence, the police had offered no protection but were in fact willing accomplices in inflicting terror on the Sikhs and in encouraging mobs to go amuck. Narasimha Rao was also informed about the criminalisation of politics by the Congress (I), who were manipulating the mobs for their own partisan ends. Narasimha Rao immediately gave orders to his Cabinet Secretary to send Army trucks to control tense areas that had been identified by the lawyers' groups. He reassured the lawyers that he would take other necessary and urgent steps.

On Monday, November 6, a group of lawyers visited the Ludlow Castle and Shahadra relief camps. The Sikhs at the latter camp categorically refused government food supplies. They informed the lawyers that Ram Narain Gupta, Municipal Councilor, Congress (I), was openly inciting mafia elements to violence¹ and there was a conspiracy to exterminate the Sikhs, who were innocent.

In an interview to *Surya* (September 1984) Kalp Nath Jha, a former Congress (I) M.P. who resigned from the party after the ouster of N.T. Rama Rao in Andhra Pradesh had said that the "Congress (I) consisted of impotent minds and criminals." The carnage, rape and violence in Nagpur lent corroboration to the testimony. An impartial enquiry into the atrocities of the last few days is imperative if the country is to be saved by a government that has exhibited its impotency and lawlessness.

Surya India – Nov. 1985

Appendix-31

Petition to Supreme Court on Delhi Riots

A Petition to the Supreme Court Organised Riots Against The Sikhs: A Violation of Fundamental Rights

We reproduce here the text of a writ petition filed under public interest litigation in the supreme Court of India by Madhu Kishwar, Ruth Vanita and Rakesh Bharadwaj, lecturers in Delhi University, against the Indian State, the Home Minister and Home Secretary as the officials who assume specific responsibility for the preservation of the country's citizens. Also included as respondents are the Delhi administration through the Lieutenant Governor, the Metropolitan Council through the Executive Councillor, the Delhi Police through the Commissioner, the Congress (I) party through its president and general secretaries, the chief Congress (I) officials of the Union Territory of Delhi, including the Congress (I) Lok Sabha members from Delhi, the members of the DPCC (I) and its ward leaders in various parts of Delhi, for their violation of the fundamental rights guaranteed in the Constitution to all citizens.

During the four day period beginning October 31, 1984, and continuing up to November 3, 1984 large numbers of Indian citizens belonging to the Sikh community were violently done to death, subjected to grievous hurt, molestation and rape, and prevented from moving freely in public places and even in their own residential colonies. Their houses were burnt down and ransacked, the instruments of their professions, trades and businesses, including vehicles, shops,

impelments, looted and destroyed. Their places of worship were desecrated, and many of them were forced to divest themselves of some of the outward signs of their religion. In all these ways their fundamental rights guaranteed under the Constitution were violated.

2. Though these tragic events took place in many parts of the country, we are petitioning the court concerning what took place in the Union Territory of Delhi, since:

- (a) Delhi is where the most severe outbreak occurred and was typical of the pattern of outbreaks elsewhere;
- (b) the petitioners gathered extensive information on what occurred in many parts of the city. We personally witnessed riots in our own neighbourhoods. We also visited many other riot affected areas and interviewed many victims of riots as well as eye-witnesses belonging to other communities. We obtained a number of detailed, systematic and specific reports and analyses of the riots from human rights organisations and journalists; public statements, of government officials were carefully perused.

3. From all that we have been able to find out, we are forced to conclude that these terrible crimes are:

- (a) violations of a whole community's fundamental human and constitutional rights;
- (b) violation of the Constitution by an attack on the fundamental rights therein guaranteed to all Indian citizens :
- (c) primarily the result of the acts of commission and omission of the respondents.

4. The Constitutional guarantees to every Indian citizen the following fundamental rights, among others:

Article 21 : No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 19 (1) : All citizens shall have the right.....

- (d) to move freely throughout the territory of India
- (e) to reside and settle in any part of the territory of India
- (g) to practise any profession, or to carry on any occupation, trade or business.

Article 14 : The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 (1) : The State shall not discriminate against any citizen on grounds only of religion.....

Article 25 (1) ...all persons are equally entitled to freedom of

conscience and the right freely to profess, practise and propagate religion.

The respondents violated all these fundamental rights by instigating and abetting the hauling of Sikhs from their homes, from private vehicles and from public transport such as buses and trains to be beaten and burnt alive, the breaking into of, their homes, shops, factories, the looting and burning thereof, the wrecking and desecration of the city's gurudwaras, and many other violative actions too numerous to detail here.

5. The Constitution, Article 13 (1), requires of the State that it shall not make any law which takes away or abridges any citizen's fundamental rights through any administrative order or even legislative act. Thus the Constitution forbids the State to take away the fundamental rights of citizens through extra legal conspiracy with hoodlums.

6. Throughout the four days that violence was raging at its peak, the entire State and government machinery, the Delhi Administration and the Delhi Police took no effective action to check it. In fact there is sufficient evidence that policemen and police officer,

- (a) stood by and watched violence, arson, rape, looting and murder, without making any attempt to intervene to protect citizens belonging to the Sikh minority, without attempting to dissuade the attackers, to call for reinforcements or other support, or even to inform the fire brigade ;
- (b) actively instigated and in many cases, participated in the violence;
- (c) refused aid and shelter to the victims and potential victims;
- (d) neglected to answer appeals for help;
- (e) refrained from apprehending known offenders who were continuing to commit criminal and unconstitutional offences ;
- (f) refused to record or to investigate charges made by reliable witnesses.

7. The Police Commissioner has since instituted an enquiry into the functioning of the police during the riots. But it is our contention that all responsibility for the universal and complete paralysis of the police force for so many days in the capital city cannot be ascribed to individual policemen's dereliction of duty alone or even to the police alone.

Individual policemen could not have acted in such unison in their dereliction of duty unless they had received orders and instructions from their superiors in the force. Further, the police force could not

have acted as it did, or could not have remained as totally inactive as it did, for such a length of time, without the complicity of higher levels of the State, government and administrative machinery. As such, while the police enquiry might identify some derelict policemen, the intent and purpose of the enquiry is to pre-empt the identification of the initiators of the conspiracy, by making out the guilty were merely some policemen and not the senior officers of the government or the ruling party. An enquiry conducted by the police into its own malfunctioning cannot be expected to uncover the truth.

8. Many of the persons who occupy high positions in the State machinery, governmental legislative bodies, and ruling party structures, have been clearly identified by many responsible citizens as some of the primary instigators of riots (See annexures). This evidence has been in the hands of the ruling authorities in the State, government and ruling party for a considerable period of time. Yet neither government nor the ruling party has thought fit to institute an appropriate public enquiry to prepare indictments of those high level member of the two institutions who were responsible for the riots.

9. The government has remained conspicuously silent as to the genesis of the riots. Apart from deploring the fact that riots occurred, no statement has been made by government acknowledging its own responsibility for any act of commission or omission which abetted riots. In fact, statements issued by government representatives such as the Prime Minister and the Home Minister referring to the origin of the riots have ascribed them to "people's anger", characterised them as "inevitable" (See annexures). Such statements, by blaming an abstraction, "the people", deny the responsibility of government and of highly placed individuals therein, as also the responsibility of the ruling party. Further, such statements are an implicit justification of the riots and seek to explain them away. As such, these statements are part of the cover up operation now being undertaken by the guilty parties.

10. The striking similarities in the manner in which violence was launched and pursued against Sikhs in wide areas of Delhi (the pattern, incidentally, did not differ in essentials from that reported in other cities and towns of the country), are an indication of the coordination carried out at the highest levels of the State, government and ruling party by individuals, some of whom occupied either one or more of party, legislative, governmental and administrative positions of formal authority, individuals thus capable of overriding the normal process of mobilisation of opposition to the violence.

In support of this view of the atrocities, certain factors must be noted:

- (a) It is noteworthy that members of the municipal corporation of Delhi and Congress (I) members of the Lok Sabha from Delhi were seen actively abetting and instigating murder, looting and arson. There is evidence that they organised gangs of their supporters to incite crowds to looting and murder, that they made payments to gang leaders to gather and transport large numbers of hoodlums and weapons into the colonies where Sikhs live, especially to those where Sikhs were more vulnerable by reason of their property or lack of community support from non-Sikhs. Many of these leaders were seen participating as leaders in the riots, making inflammatory speeches, and directing murders and lootings. During the crucial first few hours of the riots, the main impetus for transforming the sorrow, rage and frustration felt by many people at the assassination of Prime Minister Indira Gandhi into a murderous and systematic attack on citizens belonging to Sikh community in the Union Territory of Delhi was carefully orchestrated by these individuals, and others at even higher levels (See annexures). Otherwise, the violence could not have taken place as systematically as it did and any spontaneous ruffian activities could have been rapidly quenched.
- (b) Mobs of men were seen to have been transported by truck, tempo, jeep, scooter, together with caches of weapons, to the sites where violence was unleashed, from urban villages and resettlement colonies on the outskirts of Delhi, which are sources of mobilisation of ruling party cadres for political demonstrations and electoral activities (See annexure). Leaders of the mobs were seen coming in their own vehicles, issuing instructions, and then riding away.

The responsible authorities made not the slightest attempt to stop the transportation of these gangs in broad daylight even though they were shouting murderous communal slogans and brandishing weapons. Indeed, many instances of authorities having abetted their activities have been witnessed.

This refusal to halt the activities of the rioters by the governmental and ruling party structure provided a clear signal that the way was clear for all the criminal elements to murder, rape and loot at their leisure without fear or any consequences whatsoever. Indeed, they may have reckoned that they would be performing a service for the rulers for which they could later expect a variety of forms of recompense.

- (c) The unhurried, systematic and almost relaxed way many of the criminal gangs carried out their activities over the key four days of the riots shows that they were completely confident that those in authority would not disturb them nor would they be punished for their crimes. Commonly, if the mob failed to complete all its murderous acts during a single attack due to resistance put up in self defence by the victims, it would temporarily retreat, knowing that the victims would receive no help in the interval, and would return a few hours later on the same or succeeding days, with many more mob members, and would then proceed to overwhelm the trapped Sikhs, usually burning their houses and then burning the men alive.

Similarly, they would loot houses, rape women, search for hidden men in a systematic and leisurely manner that belies any notion of an irrational frenzied mob and approximates most closely to the actions of a criminal gang who have temporarily been given full authority by the ruling powers to exterminate a whole group of citizens belonging to a particular minority community.

- (d) In all the areas, the mobs were peculiarly successful in identifying Sikh houses and shops and selectively burning them. Since most shops were shut at the time of attack, and many of the Sikh residents were seeking refuge in non-Sikh homes, such remarkably accurate picking out of Sikh property as took place would have been impossible unless the mob leaders had prior information. In many places, witnesses report that the rioters had lists from ration shops, kerosene depots or voting lists, which enabled them to identify Sikh residences and business establishments (See annexures). In many places, local Congress (I) and Youth Congress (I) workers were seen pointing out victims, even those who had cut their hair, and their residences to the attackers who had come from outside the locality and hence could not recognise them.
- (e) The mode of operation of the different criminal gangs in widely separate colonies of Delhi was remarkably similar in other ways as well. Most of those murdered were male Sikhs including adult men, adolescents and young boys. While some women died when they were trapped in their homes which were surrounded and set on fire by mobs, or were killed while attempting to defend their male relatives, most

women victims have survived though many of them were injured, raped, terrorised, and otherwise made to endure brutal treatment and humiliation.

- (f) The mode of killing was also remarkably similar. Almost everywhere, male Sikhs were first beaten and immobilised into helplessness, then doused with inflammable substances, of which the mob members had supplies, and then set on fire while they were still alive and conscious. The other weapons commonly used by the mobs were *lathis*, metal pipes and stones. Few guns were used and relatively few knives, pikes or similar weapons. The mobs generally seemed confident that these were all they required, since they vastly outnumbered their victims and also knew that no support would be forthcoming to save the victims until the murderous attacks were completed.
- (g) Such uniform modes of mob action cannot arise spontaneously. They are the result of co-ordination amongst the gangs, of common purposes and common leadership. Even gangs cannot be expected to organise themselves, overnight, to operate in every nook and corner of a big city, without help from an already well organised institutional network.
- (h) The numbers of injured male victims were relatively few compared to the number murdered. This indicates systematic and cold blooded premeditated murders rather than wild mob actions for a brief period. Few of the victims were attacked and left half dead. Most of them were finished off in a very calculated manner before the attackers moved on.

11. Therefore, we submit that the violence which occurred in the four days, October 31, November 1, 2 and 3, 1984, was not a spontaneous outburst of anger on the part of unorganised crowds of people, but was the result of systematic planning and organisation by the respondents, and further that the respondents, entered into a deliberate conspiracy to undermine the Constitution by violating the fundamental rights guaranteed therein to the citizens of India, and that they also committed a criminal breach of trust by using the authority vested in them to launch a murderous attack on members of the Sikh community.

12. The government is proceeding to offer some of the survivors a lumpsum amount of Rs. 10,000 as compensation for life lost. This crude and absurd response to the desperate plight of these victims seeks to equate their situation with the plight of victims of what are

called natural disasters, and can be viewed as part of the cover up operations undertaken by the respondents. However, these lives were not lost in consequence of some natural disaster or even of a spontaneous breakdown in the protection ordinarily available to all citizens including those belonging to the Sikh minority. A Supreme Court enquiry will confirm that these lives were lost as a direct consequence of the deliberate acts of commission and omission engaged in by the respondents aforesaid. Therefore, the court should levy punitive damages of a sufficient amount to deter the organisations and individuals who engaged in murderous rioting from considering any repetition of similar actions. In addition, they should also be responsible for full restitution to these families of their material losses, though of course, all will have to acknowledge that there can never be any way to provide any form of restitution for the lives lost, the terror experienced and the enduring physical, mental and emotional wounds these victims will be forced to bear, along with their children, for the rest of their lives. All this should be arranged in conjunction with pensions similar to those given to the families of members of the Armed Forces who lose their lives during war, together with government jobs to surviving members of victims' families which will give them an income equal to that earned by the deceased and in case they are not equipped for such employment, education and training so to equip them with an allowance equal to the income of the deceased, free higher education and subsidised primary education to their children, free medical care, assistance in rebuilding their homes and business, and allotment of land at other than their present residences and places of business should the victims feel insecure at these locations. By offering these various forms of punitive reparations and material compensation we can, in one small way, indicate the sincerity with which the rest of the people of India regret the terror unleashed on the Sikh minority by gangs of hoodlums acting in our name, and using the powers of the State to attempt to protect themselves from suffering the legal consequences of their acts.

Reliefs sought

We appeal to the Court to :

1. order an independent enquiry into all the heinous crimes committed, to uncover how the orders were given, and by whom ;
2. order an interim suspension from office of those who are indicated to be leading the cover up operations ;

3. require that the enquiry result in the enunciation of basic principles that should govern the trials of the violators of constitutional rights ;
4. pending the courts decision, freeze all assets of those organisations and individuals under enquiry ;
5. offer institutional remedies to return the country to constitutional rule ;
6. provide guidelines for the payment of punitive fines, reparations and compensations from the frozen assets of the extra-governmental organisations and individuals who are convicted of having participated in the murderous attacks on the lives and constitutional rights of Indian citizens belonging to the Sikh minority ;
7. any other order this honourable court deems fit in the interest of justice.

Prayer

In this unprecedented situation, we appeal to the Supreme Court to use its authority to order a full enquiry into this heinous crime, to determine which of the governmental bodies have acted unconstitutionally, and to what extent, or have not acted where under law they were duty-bound to act, which extra-governmental organisations have conspired to violate the constitutional rights of the citizens and to attack a minority community, and which individuals in positions of trust and authority, in the State, violated their oaths of office to plan and help execute a campaign of terror, looting, murder, and rape against a whole community of Indian citizens.

We realise that in other circumstances the regular law enforcement machinery of the State would have the responsibility to implement the enquiry within the normal framework of the laws, legislative and administrative machinery of the State. However, since key functionaries of that very State and its machinery are co-conspirators in the violation of the constitutional rights of the citizens and have also carried out a massive attempt at cover up of their own culpability, we have no option but to approach this, the highest court in the land. This honourable court has both the constitutional prerogative and the authority to search out the truth and to return the country to constitutional rule, to remove violators of the Constitution from positions of power, to require that the guilty are brought to justice and made to pay damages, to ensure that the devastated minority receives some measure of appropriate reparation.

Appendix-32

Khushwant Singh's Speech on Delhi Riots

S. Khushwant Singh's Speech in Parliament

“Mr Vice-Chairman, sir, I will restrict my comments to one single sentence in the Presidential Address. This is regarding the post-assassination violence that took place in many cities in northern India. The sentence I wish to comment upon is in para 7. It reads: “stern and effective action was taken to control the situation within the shortest possible time.” I will not make a lengthy speech. The little that I say will be from personal experience and I hope I will carry every Member of the House with me.

“I was at the receiving end of this violence. I don't think any other Member was. And that entirely because of my appearance; I am a Sikh. Sir, the assassination took place in the morning of 31st; the Prime Minister's death was announced in the afternoon. The violence began immediately afterwards starting from All-India Institute of Medical Sciences and then spreading everywhere. The pattern was the same. The victims were invariably Sikhs. It was assumed that they shared some of the guilt of what the two assassins had done. I live in a middle-class area near Khan Market. First violence took place at night. Some cars standing outside my house were burnt. It continued the whole of next day. In the morning, a gurdwara next door was burnt. Then, one taxi stand was destroyed. Shops alongside were looted; they only picked on Sikh shops. I wish to emphasize that right through these days from the 31st afternoon to 1st and 2nd, the police was always present, always witnessing what was going on and doing nothing. I rang up the police station many times; I was promised that they would come to our assistance; they did not come, and ultimately even a person like me who was not expected to stand to this kind of violence, had to leave my house, because I thought if my house was to be burnt I would save my own life.

“Can this be described as ‘stern and effective action and in the shortest possible time?’ Let me give you the figures. In these two days, 6000 innocent Sikhs were massacred in different parts of the

country; at least 900 women were widowed; 50,000 Sikhs were rendered homeless and were removed to refugee camps; thousands of crores worth of property of the Sikhs was destroyed. Would you describe action taken as "stern and effective in the shortest possible time?" This tragedy has passed; we are all ashamed of what happened. This time the victims were Sikhs and for understandable reasons because the assassins were Sikhs, because killings had been going on in Punjab committed by Sikhs, terrorists. But watch my words. People who came were lumpen elements from jhuggi-jhonpris and from villages whose lands had been acquired for expansion of Delhi. Now the tiger has tasted blood. This time, it was us. Next time, it will be all of you. If it happens again, it will be the propertied persons who will be the victims. I hope, what happened last time is not a precedent. If it is a precedent and you have to justify it as stern and effective action, taken in the shortest possible time, then, there is very little hope for the country.

I hoped very much that I would be carrying the House with me. But unfortunately, I find I am not likely to do so. Let me end by referring to two reports which have come out. One is entitled 'Who are the Guilty?' This has been prepared by Dr. Rajni Kothari, an academician. The other which will be in your hands in a few days, is prepared by a committee presided over by the retired Chief Justice of the Supreme Court, Justice S.M. Sikri. Members of this committee are some of the senior-most men, now retired, of the civil service, like, Badruddin Tyabji, Rajeshwar Dayal, Govind Narain. Not one of them is a Sikh. They have made a most damaging indictment against the administration. 'Who are the Guilty' has a list of names. I am not going to name them because it is not done. Among those named are a senior Minister of the Government, several Members of Parliament, Members of the Metropolitan Council, and Members of the Delhi Municipal Corporation. I would like to ask the Government, "Don't you think that these people who have been named owe it to themselves to clear their names?" Does not the Government have any sense of responsibility that this kind of insinuation should not go unchallenged? If you have any sense of history, if fifty years from now, somebody is going to write this episode following the tragic assassination of our Prime Minister, what documents will he have? This and the Sikri Report, nothing else. I emphasize this point entirely because I want to say with all the power at my command that the Government must appoint a high-powered judicial commission to go into this subject. Unless the guilty are identified and punished, mark my words, there will be no settlement of the Punjab problem and there will be no peace in this country."

Appendix-33
**Judgement in Indira
Murder Case**

– The Criminal Law Journal
1989

1989 CRI. L.J.1
= AIR 1988 Supreme Court 1883

(From : Delhi)*

G.L. OZA, B.C. RAY AND K. JAGANNATHA SHETTY, JJ.**

Criminal Appeals Nos. 180 to 182 of 1987, Dt. 3-8-1988

Kehar Singh and others – *Appellants*

vs.

The State (Delhi Admn.) – *Respondent.*

(A) Criminal P.C. (1974), S. 194 – Scope – High Court – Powers off – Cases triable by Sessions Judge/Addl. Sessions Judge – High Court is competent to allot a particular case to a particular Judge.

The first part of S. 194 clearly provides that the Sessions Judge of the Division by general or special order is supposed to allot cases arising in a particular area or jurisdiction to be tried by Additional or Assistant Sessions Judges appointed in the Division but the last part of this Section also authorises the High Court to allot the case to a particular Judge keeping in view the fact that in certain cases the Sessions Judge may not like to allot and may report to the High Court or either of the parties may move an application for transfer and under these circumstances it may become necessary for the High Court to allot a particular case to a particular Judge.

(Paras 20, 93, 140)

* Murder Reference No. 2 of 1986 and Criminal Appeal Nos. 28 and 29 of 1986, Dt. 3-12-1986 (Delhi).

** Note: The judgements are printed in the order in which they are given in the certified copy.

(B) Criminal P.C. (1974), S.9(6) – Place of sitting of Sessions Court – Trial of Smt. Indira Gandhi Murder case – Notification by High Court for holding sittings of Sessions Court in Tihar Jail – No illegality as the Notification amounted to declaring Tihar Jail as one place in addition to Tis Hazari and New Delhi where Sessions Court could hold its sittings.

(Paras 22, 94, 163, 174)

(C) Criminal P.C. (1974), S. 327 – Public and open trial – Criminal trial held in jail or private house – It is deemed to be open place in law – Everyone has right to attend – Restrictions imposed to regulate entry by way of security measures – Trial does not cease to be open. (Constitution of India, Art. 21); (Open trial – Criminal trial held in jail or private house – It is deemed to be open place in law – Everyone has right to attend – Restrictions imposed to regulate entry by way of security measures – Trial does not cease to be open).

Per Oza, J.

The language of S. 327 itself indicates that even if a trial is held in a private house or is held inside Jail or anywhere no sooner it becomes a venue of trial of a criminal case it is deemed to be in law an open place and everyone who wants to go and attend the trial has a right to go and attend the trial except the only restriction contemplated is number of persons which could be contained in the premises where the Court sits. Merely because a trial (Smt. Indira Gandhi Murder Case) is shifted from the ordinary place where the Sessions Court are sitting to Tihar Jail it does not automatically become a trial which is not open to public. So far as this country is concerned the law is very clear that as soon as a trial of a criminal case is held whatever may be the place it will be an open trial. That certain restrictions like obtaining entry pass etc. are imposed does not mean that it ceases to be an open trial.

(Para 24)

The procedure established by law as indicated in Art. 21 is as provided in S. 327 and unless on facts it is established that what is provided in S. 327 was prevented or was not permitted, it could not be said that merely because trial was held at a particular place it could be said to be a trial which was not open to public.

(Para 24)

Per Ray. J. (Concurring)

Though public trial or trial in open court is the rule yet in cases where the ends of justice would be defeated if the trial is held in public, it is in that case the Court has got inherent jurisdiction to hold trial in camera. Therefore, the holding of trial in jail cannot be said to be illegal and bad and entire trial cannot be questioned as vitiated if the High Court thinks it expedient to hold the trial in jail.
(Paras 95, 101, 106)

Per Shetty. J. (Concurring)

Jail is not a prohibited place for trial of Criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reason of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court. There should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court house. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice.

(Para 183)

In the instant case trial in the Smt. Indira Gandhi Murder Case was held at Tihar Jail. There was no material at all to suggest that any one who wanted to attend the trial was prevented from so doing or one who wanted to go into the Court room was not allowed to do so and in absence of any such material on actual facts it could not be said that the trial was not public and open.

(Paras 24, 101, 184, 194)

(D) Constitution of India, Art. 21 – “Procedure established by law” – Means procedure as was on the day on which Constitution was adopted – Open trial – S. 327, Cr. P.C. provides procedure – Even assuming that S. 327 is repealed it would be difficult to say that the effect of “procedure established by law” could be taken away. (Obiter – Per Oza, J.) (Procedure established by law – Whether can be taken away by amending existing statute).

(Para 24)

(E) Evidence Act (1872), Ss.145, 155, 157 - Commission of Enquiry Act (1952), S. 6 – Statement made by witness before Commission

– Use of, to contradict him or to impeach his credit – Not permissible.

Statement made by a witness before the Commission constituted under the Commission of Enquiries Act cannot be used (i) to subject the witness to any civil or criminal proceedings, (ii) nor it can be used against him in any civil or criminal proceedings the exception being that he can be prosecuted for giving false evidence. A perusal of Ss. 145, 155 and 157 of the Evidence Act clearly indicate that there are two purposes for which a previous statement can be used. One is for cross-examination and contradiction and the other is for corroboration. When the defence wants to use the previous statement of a witness it could be only to contradict and not to corroborate. However, considering the restrictions contained in S. 6 of the Commission of Enquiry Act, the statement made by a witness before a Commission could not be used in a criminal trial either for the purposes of cross-examination to contradict the witness or to impeach his credit. The accused in the instant case (*i.e.* Smt. Indira Gandhi Murder Case) had made a prayer both before the trial Court and the High Court that the copies of the statement of witnesses who have been examined by the prosecution and were also examined before the Commission (Thakkar Commission) be provided to them so that they may be in a position to use these statements for purposes of contradiction or for other purposes. They had also prayed for other purposes. They had also prayed for the copy of the Thakkar Commission report as the Thakkar Commission was inquiring into the events which led to the assassination of the Prime Minister Smt. Indira Gandhi. Some of the terms of reference of the Commission were such that the evidence collected by the Commission could be said to be relevant for the purposes of trial of the accused.

Held that in view of the prohibition contained in S. 6 of the Commission of Enquiry Act the copies of the statements made by the witnesses before the Commission could not be supplied to the accused. The Report of the Thakkar Commission could neither be summoned by the Court since it has no evidentiary value in the trial of a criminal case.

(Paras 39, 40)

(F) Penal Code (1860), S. 302 – Murder trial – Post mortem – Importance – Cause of death of victim (gun shot injuries in instant case) not disputed – Fact that fuller post mortem was not conducted is not important – It is important in cases where cause of death is not established and is in controversy. (Post mortem – Necessity and importance).

(Paras 42, 320)

(G) Constitution of India, Art. 136 – Concurrent finding of fact – Criminal case – Appeal by special leave – Supreme Court can interfere in certain situations.

Where the High Court has reached conclusions based on partly inadmissible evidence and partly on circumstances which are not justified on the basis of evidence, or partly on facts which are not borne out from the evidence on record it cannot be said that in an appeal under Art. 136 the Supreme Court will not go into the facts of the case and come to its own conclusions.

(Para 43)

(H) Evidence Act (1872), S. 10 – Penal Code (1860), S. 120A – Conspiracy – Evidence of action or statements made by one accused – Use against other accused, – Reasonable ground to believe that two or more persons conspired together must have been established.

Per Oza, J.

It is necessary that a *prima facie* case of conspiracy has to be established for application of S. 10 of the Evidence Act. The second part of S. 10 permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in S. 10 in cases of conspiracy. The second part operates only when the first part of the Section is clearly established *i.e.* there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of S. 120-A. It is only then the evidence of action or statements made by one of the accused could be used as evidence against the other.

(Para 44)

Per Shetty, J. (Concurring)

Section 10 comes into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be in other words, a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such *prima facie* evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it.

(Para 275)

(I) Penal Code (1860), Ss. 120-B, 120-A, 107, 109 – Criminal conspiracy and abetment in conspiracy – Distinction – Conspirator not actually committing offence conspired – can still be sentenced for committing that offence – Not necessary to frame charge of abetment of conspiracy under S. 109 against him.

When an accused is a party to a criminal conspiracy which led to commission of offence (murder in instant case) by other co-accused, it cannot be said that the accused (conspirator) who did not himself participate in the commission of the offence could not be sentenced for the main offence *i.e.* murder and that he could be sentenced only for abetment of the offence in absence of charge under S. 109 against him. There is vital difference between (i) abetment in any conspiracy, (ii) criminal conspiracy. The former is defined under the second clause of S. 107 and the latter is under S. 120A. The gist of the offence of criminal conspiracy created under S. 120A is a bare agreement to commit an offence. It has been made punishable under S. 120B. The offence of abetment created under the second clause of S. 107 requires that there must be something more than a mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by the wordings of S. 107. (Secondly) : “engages in any conspiracy.....for the doing of that thing, if an act of illegal omission takes place in pursuance of that conspiracy.....” The punishments for these two categories of crimes are also quite different. S. 109 IPC is concerned only with the punishment of abetments for which no express provision is made under the Penal Code. A charge under S. 109 should, therefore, be along with some other substantive offence committed in consequence of abetment. The offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under S. 120B for which a charge under S. 109 IPC is unnecessary and indeed, inappropriate.

(Paras 255, 257)

(J) Penal Code (1860), Ss. 120A, 120B – Conspiracy – Proof – Law in India is similar to that in England.

Per Shetty, J.

Sections 120A and 120B have brought the Law of Conspiracy in India in line with the English Law by making the overt act unessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may

or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Ss. 120A and 120B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy. (Paras 268, 271)

Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. The relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict.

(Paras 272, 273)

(K) Evidence Act (1872), S.3 – Evidence – Appreciation of – Murder trial – One of accused alleged to be absconding – Arrested at busy public place and incriminating articles seized from him – No Panch witnesses kept present – Held, prosecution's claim that he was absconding was not trust-worthy. [Penal Code (1860), S. 302; Criminal P.C. (1974), S. 100].

One of the accused alleged to be absconding immediately after the incident – On getting information that he would come at certain place, police arresting him and recovering some allegedly incriminating articles from him – Two respectable witnesses either from locality or otherwise not kept present – Accused taken at some other place before he was searched and articles seized from him – No question relating to his abscondence put to him in his examination under S. 313, Cr. P.C. – Held in the circumstances that prosecution's plea

that accused was absconding could not be believed – He could have been under arrest even prior to date claimed by prosecution.

(Paras 52, 53, 260, 262, 263)

(L) Criminal P.C. (1974), S. 354 (3) – Penal Code (1860), S. 302 – Murder – Sentence – Death penalty – Rarest of rare case – Murder of Smt. Indira Gandhi, then Prime Minister by security guards – Death sentence awarded to assassin and his conspirator – Held, just and proper. (Death penalty – Rarest of rare case – Political murder).

In the instant case the accused were convicted for entering into conspiracy and committing murder of Smt. Indira Gandhi, then Prime Minister of India and were awarded death penalty. The death penalty was confirmed by the Supreme Court.

Per Oza, J.

In our country we have adopted and accepted a system wherein change of the leader is permissible by ballot and not by bullet. The act of the accused not only takes away the life of popular leader but also undermines our system which has been working so well for the last forty years. There is yet another serious consideration. The accused are persons who were posted on the security duty of the Prime Minister. They are posted there to protect her from the intruder or from any attack from outside and therefore if they themselves resort to this kind of offence, there appears to be no reason or no mitigating circumstance for consideration on the question of sentence. Additionally, an unarmed lady was attacked by these two persons with a series of bullets and it has been found that a number of bullets entered her body. The manner in which mercilessly she was attacked by these two persons on whom the confidence was reposed to give her protection repels any consideration of reduction of sentence. In this view of the matter, even the conspirator who inspired the persons who actually acted does not deserve any leniency in the matter of sentence. The sentence awarded by the trial court and maintained by the High Court appears to be just and proper.

(Para 91)

Per Ray, J.

It is a gruesome murder committed by the accused who was employed as a security guard to protect the Prime Minister Indira Gandhi. It is one of the rarest of rare cases in which extreme penalty of death is called for.

(Para 138)

Per Shetty, J.

The crime charged is not simply the murdering of a human being, but it is the crime of assassination of the duly elected Prime Minister of the Country. The motive for the crime was not personal, but the consequences of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic, if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy conspiracies. Indian citizens are committed to the Constitution. They have faith in the ballot box. They have confidence in the democratic institutions. They have respect for constitutional authorities.

(Para 142)

The "Blue Star Operation" was not directed to cause damage to Akal Takht. Nor it was intended to hurt the religious feelings of Sikhs. The decision was taken by the responsible and responsive Government in the national interest. The Prime Minister (Late) Mrs. Indira Gandhi was, however, made the target for the consequences of the decision. The security guards who were duty bound to protect the Prime Minister at the cost of their lives, themselves became the assassins. Incredible but true. All values and all ideals in life; all norms and obligations are thrown to the winds. It is a betrayal of the worst order. It is the most foul and senseless assassination. The preparations for and the execution of this egregious crime do deserve the dread sentence of the law.

(Para 323)

(M) Interpretation of Statutes – Court's approach – Change from emphasis on "grammatical meaning" to "Intention of legislature" or "purpose of statute".

Per Shetty, J.

In the past, the Judges and lawyers spoke of a 'golden rule' by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the Court to intervene by its innovation. During the last several years, the

'golden rule' has been given a go-bye. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision but of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences. This adventure, no doubt, enlarges Courts' discretion as to interpretation. But it does not imply power to Courts to substitute its own notions of legislative intention. It implies only a power of choice where differing constructions are possible and different meanings are available.

(Paras 227, 228, 229)

(N) Criminal P.C. (2 of 1974), Ss. 164(2), 463 – Compliance with sub-sec. (2) of S. 164 – Mandatory – Omission to record compliance – Curable under S. 463.

Per Ray, J.

The provisions of S. 164 (2) which require that the Magistrate before recording confession shall explain to the person making confession that he is not bound to make a confession and if he does so it may be used as evidence against him and upon questioning the person if the Magistrate has reasons to believe that it is being made voluntarily then the confession will be recorded by the Magistrate. The compliance of sub-sec. (2) of S. 164 is, therefore, mandatory and imperative and non-compliance of it renders the confession inadmissible in evidence. S. 463 (old S. 533) of the Criminal P.C. provides that where the questions and answers regarding the confession have not been recorded evidence can be adduced to prove that in fact the requirements of sub-sec. (2) of S. 164 read with S. 281 have been complied with. If the Court comes to a finding that such a compliance

had in fact been made the mere omission to record, the same in the proper form will not render it inadmissible in evidence and the defects is cured under S. 463 (S. 533 of the old Criminal P.C.) but when there is non-compliance of the mandatory requirement of S. 164(2), Criminal P.C., and it comes out in evidence that no such explanation as envisaged in the aforesaid sub-section has been given to the accused by the Magistrate, this substantial defect cannot be cured under S. 463, Criminal P.C.

(Paras 117, 121)

(O) Evidence Act (1 of 1872), S. 25 – Retracted confession – Can be used against accused making confession.

(Para 135)

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Mr. Ram Jethmalani, Sr. Advocate, Mr. R.S. Sodhi, Ms. Rani Jethmalani, Mr. R.M. Tewari, Mr. Ashok Sharma, Mr. Sanjeev Kumar, Advocates with him, for Appellants: Mr. G.Ramaswamy, Addl. Solicitor General, Mr. S. Madhusudhan Rao, Sr. Advocate, Mr. P. Parmeshwaran, Ms. A. Subhashini, Mr. M.V. Chelapathi Rao, Mr. S.F. Manocha and Mr. A.P. Ahluwalia, Advocates with them, for Respondent.

OZA, J. : These appeals by leave are directed against the conviction of the three appellants Kehar Singh, Balbir Singh and Satwant Singh under Section 302 read with Section 120-B, I.P.C. and the appellant

Satwant Singh under Section 302 read with Sec. 120-B, Sec. 34 and Sec. 307, I.P.C. and also under Sec. 27 of the Arms Act. All the three were sentenced to death under Section 302 read with Sec. 120-B. The conviction and sentence of these appellants were confirmed by the High Court of Delhi by its judgement in Criminal Appeals Nos. 28-29/1986 and Confirmation Case No. 2/86. The case relates to a very unfortunate incident where the Prime Minister Smt. Indira Gandhi was assassinated by persons posted for her security at her residence.

2. The facts brought out during investigation are that Smt. Indira Gandhi had her residence in New Delhi at No.1, Safdarjung Road. Her Office was at No.1, Akbar Road which was a bungalow adjoining her residence. In fact the two bungalows had been rolled into one by a campus with a cemented pathway about 8 ft. wide leading from the residence to the Office and separated by a Sentry gate which has been referred to as the TMC Gate and a sentry booth nearby. Smt. Indira Gandhi had gone on a tour to Orissa and returned to New Delhi on the night of 30th October, 1984. At about 9 A.M. on the fateful day i.e. 31st October, 1984, Smt. Gandhi left her residence and proceeded towards the office along the cemented path. When she approached the TMC Gate and was about 10 or 11 ft. away therefrom she was riddled with a spray of bullets and she fell immediately. She was removed to All India Institute of Medical Sciences ('AIIMS' for short) but to no avail. A wireless message about the occurrence was received at 9.23 A.M. by the Wireless Operator Head Constable Ram Kumar P.W. 38 at Tughlak Road Police Station having jurisdiction over the place of occurrence. The Duty Officer P.W. 1 deputed Sub-Inspector Vir Singh P.W. 20 and Constable Mulak Raj to visit the spot at once. They were soon joined by the Station House Officer Inspector Baldev Singh Gill P.W. 21. These persons roped off the area of occurrence to isolate it, placed it in charge of Constable and then proceeded to AIIMS.

3. In the meanwhile it was decided to entrust this investigation to Rajendra Prasad Kochhar P.W. 73 then Inspector in the Homicide squad of the Crime Branch of Delhi Police. However, as is only to be expected having regard to the circumstances, the Government soon decided to constitute a Special Investigation Team (SIT) to pursue the investigation. On 9-11-84 the Delhi Administration issued two notifications. By one of these in exercise of powers under Section 7 (1) of Delhi Police Act, S. Anandram, IPS was appointed as an Additional Commissioner of Police and was declared for the purpose of Section 36, Cr. P.C. to be a Police Officer superior in rank to an Officer-in-charge of a Police Station. By the other notification issued

in exercise of the powers conferred under Sec. 7(2)(b) of the Police Act, Anandram was authorised to exercise all the powers and perform all the duties of Commissioner of Police in relation to this case and any other offences connected thereto. The notification shows that copy of each of them is forwarded for publication to the Delhi Gazette. Some time later on 22nd December, 1984 the Administration in exercise of powers under Section 8(1) of the Police Act appointed Des Raj Kakkar and M.S. Sharma as Deputy Commissioner of Police and Assistant Commissioner of Police respectively designating them as Officers superior to an Officer-in-charge of a Police Station and placed their services at the disposal of Shri Anandram. We understand that Shri R.P. Kapoor was named as the Chief Investigation Officer but it was Mr. Kochhar who was closely associated with the investigation throughout except for a short period between 15-11-84 when the SIT assumed charge and 27-11-84 when his services were lent to SIT and he is an important witness of the prosecution so far as investigation is concerned.

4. Shri Kochhar reached AIIMS at about 10 A.M. and at 11.25 A.M. on 31-10-84 he sent at the Tughlak Road Police Station through Shri Vir Singh, PW 20 a report on the basis of which First Information Report (FIR) for a cognizable offence punishable under Sections 307, 120-B, IPC and Sections 25, 27, 54 and 59 of the Arms Act was registered at the Police Station. The report was based on the statement of Narain Singh, PW 9, a Head Constable deputed on duty at Smt. Indira Gandhi's residence, recorded by Shri Kochhar at AIIMS. Narain Singh who was accompanying Smt. Gandhi at the time of shooting and claimed to be a witness of occurrence had stated as follows. This statement made by Narain Singh in the First Information Report brings out the important facts leading to the offence and this part of the Statement as quoted by the High Court reads :

"When we were about 10-11 ft. away from the gate of 1, Safdarjung Road and 1, Akbar Road, I noticed Beant Singh SI on duty at TMC Gate and in the adjoining Sentry booth Constable Satwant Singh, 2nd Bn, in uniform armed with a Stengun was on duty. When Smt. Indira Gandhi reached near the Sentry booth, Beant Singh, SI took out his service revolver from his right dub and immediately started firing bullets at Smt. Indira Gandhi. At the same time Constable Satwant Singh also fired shots at Smt. Indira Gandhi with his Stengun. As a result of firing of bullets at the hands of the aforesaid two persons Smt. Indira Gandhi sustained injuries on her front and fell down on

the ground. Sh. Rameshwar Dayal ASI has also received bullet injuries due to the firing made by the aforesaid two persons. I threw the umbrella, Shri Beant Singh SI and Constable Satwant Singh were secured with the assistance of Shri B.K. Bhatt, AGP PSO in ITBP personnel. The arms of these two persons fell down on the spot itself. Thereafter I went to call Dr. R. Obey. In the meantime the car, doctor and the other officials reached the place of occurrence and Smt. Indira Gandhi was removed to AIIMS and was got admitted there. Shri B.K. Bhatt, Shri R.K. Dhawan, Shri Nathu Ram, Sh. Lavang Sherpa and Shri Rameshwar Dayal ASI had witnessed the occurrence. Beant Singh SI and Constable Satwant Singh in furtherance of their common objects have fired shots at Smt. Indira Gandhi and have caused injuries on her person with an intention to kill her. It is learnt that Beant Singh SI and Constable Satwant Singh had also sustained bullet injuries at the hands of ITBP personnel. Legal action may please be taken against them."

5. Upon receiving the news about the death of Smt. Indira Gandhi, the offence in the FIR was converted from Section 307 to Section 302 and investigation proceeded ahead.

6. According to the prosecution Satwant Singh was arrested on 15-11-84 at Red Fort where he had been taken after his discharge from the Hospital in early hours of the same day. The Chief Justice and the Judges of the Delhi High Court on a request made by Delhi Administration decided to depute and designate Shri S.L. Khanna, Additional Chief Metropolitan Magistrate, Tis Hazari to deal with the remand matter of Satwant Singh in Red Fort, Delhi. Satwant Singh was produced before Shri S.L. Khanna, PW 67 on the same day and remanded to the police custody till 29-11-84. On 29-11-84 it was said that Satwant Singh wanted to make a confession and he was produced before Shri Khanna. Shri Khanna, however, gave him time to think over till 1-12-84 and remanded him to judicial custody in Tihar Jail. It appears that thereafter the Delhi Administration again made a request to the Delhi High Court and the Delhi High Court authorised Sh. S.L. Khanna by Order dated 1-12-84 to hold remand proceedings in Tihar Jail on 1-12-84 and on subsequent dates. It also appears that Shri G.P. Tareja who was the link Magistrate of Shri S.L. Khanna had gone on long leave and by an order dated 1-12-84, Shri Bharat Bhushan Gupta, PW 1 was appointed as a link Magistrate in this case. In the light of these orders Satwant Singh was produced before Shri Khanna on 1-12-84 in the Jail. He passed

on the papers to Shri Bharat Bhushan Gupta and later recorded a confession from Satwant Singh on the same day which is Ex. 11-G.

7. One Kehar Singh said to be an Uncle (Phoopha) of Beant Singh working as an Assistant in the Office of the Director General of Supplies and Disposals was claimed to have been arrested on 30-11-84. He was produced before Shri Khanna on 1-12-84 who remanded him to police custody till 5-12-84. He is said to have made a statement on 3-12-84 in pursuance of which some incriminating articles were seized at his house and from a place pointed out by him. He was again produced on 5-12-84 before Shri S.L. Khanna who remanded him to judicial custody till 15-12-84 pending further investigation.

8. Balbir Singh, a Sub-Inspector posted for security duty at Smt. Gandhi's office is said to have been arrested on 3-12-84. It is said that certain incriminating material was found on his person when searched at the time of his arrest. On 4-12-84 at the request of Delhi Administration the High Court empowered Shri S.L. Khanna to deal with the remand matter of these persons accused in the assassination case of Prime Minister. Balbir Singh was therefore produced before Shri S.L. Khanna on 4-12-84 and was remanded to the police custody till 6-12-84. On 6-12-84 an application was filed before Shri S.L. Khanna which stated that Balbir Singh wanted to make a confession. The matter was sent by Sh. S.L. Khanna to Sh. Bharat Bhushan Gupta. After two appearances before Shri Bharat Bhushan, Balbir Singh finally refused to make statement confessional or otherwise.

9. In the meantime the Police had recorded certain statements one of Amarjit Singh PW 44 who was also a Police Officer ASI on duty at the PM's residence. These statements have been recorded on 24-11-84, and on 19-12-84. The Police requested the Magistrate Shri Bharat Bhushan to record a statement of Amarjit under Section 164, Cr. P.C. That was accordingly recorded as PW 44-A.

10. Beant Singh had died as a result of injuries sustained by him and referred to by Narain Singh in his statement in the FIR itself. A report under Section 173, Cr. P.C. hereto referred to as the chargesheet was filed on 11-12-1985 in the Court of Shri S.L. Khanna against Satwant Singh who had survived after a period of critical illness from his injuries and the two other persons referred to above namely Balbir Singh and Kehar Singh. These three persons were accused of an offence under Sections 120-B, 109 and 34 read with 302, IPC and also of substantive offences under Sections 302, 307, IPC and Sections 27, 54 and 59 of the Arms Act. This report also

mentions Beant Singh as one of the accused persons but since he had died the charges against him were said to have abated.

11. The prosecution case at the trial was that in June, 1984 the armed forces of the Indian Union took action which is described generally as 'Operation Bluestar' under which armed forces personnel entered the Golden Temple complex at Amritsar and cleared it off the terrorists. In this operation it is alleged that there was loss of life and properities as well as damage amongst other things to the Akal Takht in the Golden Temple complex. As a result of this Operation the religious feelings of the members of the Sikh community were greatly offended. According to the prosecution, all the four accused persons mentioned expressing their resentment openly and holding Smt. Indira Gandhi responsible for the action taken at Amritsar. They had met at various places and at various times to discuss and to listen inflammatory speeches and recording calculated to excite listeners and provoke them to retaliatory action against the decision of the Government to take army action in Golden Temple complex. The resentment led them ultimately to the incident of 31-1-84 and to become parties to a criminal conspiracy to commit an illegal act namely to commit the murder of Smt. Indira Gandhi. In pursuance of the above conspiracy accused has committed the following acts. This report (chargesheet) stated facts against each of the accused persons which have been quoted by the High Court in its judgment :

- (i) Accused Kchar Singh, a religious fanatic, after the 'Bluestar Operation' converted Beant Singh and through him Satwant Singh to religious bigotry and made them undergo 'Amrit Chhakna Ceremony' on 14-10-1984 and 24-10-1984 respectively at Gurudwara Sector VI, R.K. Puram, New Delhi. He also took Beant Singh to Golden Temple on 20-10-1984 where Satwant Singh was to join them as part of the mission.
- (ii) Since the 'Bluestar Operation' Balbir Singh was planning to commit the murder of Smt. Indira Gandhi and discussed his plans with Beant Singh, who had similar plans to commit the offence. Balbir Singh also shared his intention and prompted Satwant Singh to commit the murder of Smt. Indira Gandhi and finally discussed this matter with him on 30th October, 1984.
- (iii) In the first week of September, 1984, when a falcon (baaz) happened to sit on a tree near the main reception of PM's house, at about 1.30 P.M. Balbir Singh spotted the falcon,

called Beant Singh there and pointed out the falcon. Both of them agreed that it had brought the message of the Tenth Guru of the Sikhs and that they should do something by way of revenge of the 'Bluestar Operation'. Both of the above accused performed ardas then and there.

- (iv) In pursuance of the aforesaid conspiracy, Beant Singh and Satwant Singh, who had prior knowledge that Smt. Indira Gandhi was scheduled to pass through the T.M.C. Gate on 31-10-1984 at about 9 A.M. for an interview with an Irish television team, manipulated their duties in such a manner that Beant Singh would be present at the T.M.C. Gate and Satwant Singh at the T.M.C. Sentry booth on 31-10-1984 between 7.00 and 10.00 A.M. Beant Singh managed to exchange his duty with SI Jai Narain (PW 7) and Satwant Singh arranged to get his duty changed from Beat No. 4 at PM's house to T.M.C. Sentry Booth situated near the latrine by misrepresenting that he was suffering from dysentery. Beant Singh was armed with a revolver (No. J-296754, Butt No. 140) which had 18 cartridges of .38 bore and Satwant Singh was armed with a SAF Carbine (No. WW-13980 with Butt No. 80) and 100 cartridges of .9 mm. Both having managed to station themselves together near the T.M.C. Gate on 31-10-1984, at about 9.10 A.M., Beant Singh opened fire from his revolver and Satwant Singh from his carbine at Smt. Indira Gandhi as she was approaching the T.M.C. Gate. Beant Singh fired five rounds and Satwant Singh 25 shots at her from their respective weapons. Smt. Indira Gandhi sustained injuries and fell down. She was immediately taken to the AIIMS where she succumbed to her injuries the same day. The cause of death was certified upon a post-mortem which took place on 31-10-1984, as haemorrhage and shock due to multiple fire arm bullet injuries which were sufficient to cause death in the ordinary course of nature. The post-mortem report No. 1340/84 of the AIIMS also opined that injuries Nos. 1 and 2, specified in the report, were sufficient to cause death in the ordinary course of nature, as well.

12. In this report (chargesheet) it was also mentioned that Beant Singh and Satwant Singh laid down their weapons on the spot which had been recovered. About five empties of Beant Singh's revolver were recovered and 13 live cartridges .38 bore from his person, 25 empties of SAF carbine and 6 lead pieces were recovered from the

spot. About 75 live cartridges of .99 SAF carbine were recovered from the person of Satwant Singh. That two lead pieces were recovered from the body of Smt. Indira Gandhi during the post-mortem and two from her clothes and that the experts have opined that the bullets recovered from the body and found from the spot were fired through the weapons possessed by these two accused persons. The report also mentioned that Rameshwar Dayal ASI who was following Smt. Indira Gandhi, PW 10 also received grievous and dangerous injuries on his left thigh as a result of shots fired by the accused which according to the medical opinion were grievous and dangerous to life.

13. It is significant that in this case the Additional Sessions Judge who tried the case was nominated by the High Court for trial of this case and on this count some arguments were advanced by the learned counsel for the appellants. I will examine the contentions a little later. Learned counsel appearing for appellants Kehar Singh and Balbir Singh first raised some preliminary objections about the procedure at the trial. First contention raised by him was about the venue of the trial and the manner in which this venue was fixed by the Delhi High Court by a notification under Section 9 (6), Cr. P.C.

14. The second objection was about the trial held in jail and it was contended that under Article 21 of the Constitution of India, open and public trial is one of the constitutional guarantees of a fair and just trial and by holding the trial in the Tihar Jail this guarantee has been affected and accused have been deprived of a fair and open trial as contemplated under Section 327, Cr. P.C. The other objection raised was that under Sec. 327, Cr. P.C. it is only the trial Judge, the Sessions Judge who could for any special reasons hold the trial in camera but there is no authority conferred under that Section on the High Court to shift the trial in a place where it ultimately ceases to be an open trial. Learned counsel on this ground referred to series of decisions from United States, England and also from our own Courts and contended that the open trial is a part of the fair trial which an accused is always entitled to.

15. The other question raised by the learned counsel for the appellants was that by preventing the accused from getting the papers of the Thakkar Commission, its report and statements of persons recorded, who are prosecution witnesses at the trial the accused have been deprived of substantial material which could be used for their defence.

16. These main questions were raised by the counsel appearing for Kehar Singh and Balbir Singh and counsel for Satwant Singh

adopted these arguments and in addition raised certain preliminary objections pertaining to the evidence of post-mortem, ballistic expert and similar matters.

17. Learned Additional Solicitor General appearing for the respondent replied to some of the legal arguments and also the other arguments on facts. One of the preliminary objections sought to be raised by the learned Additional Solicitor General was that this Court in an appeal under Article 136 of the Constitution of India is not expected to interfere with the findings of facts arrived by the two Courts below. He also relied on some decisions of this Court to support his contention.

18. On the preliminary objection raised by the Additional Solicitor General that in this appeal under Article 136, we are not expected to go into the facts of the case, we will like to observe that we are dealing with a case where the elected leader of our people, the Prime Minister of India was assassinated and who was not only an elected leader of the majority but was very popular with the people, as observed also by the High Court in its judgment but still we have all through maintained the cardinal principle of our Constitution – Equality before law and the concept of rule of law in the system of administration of justice. Although these accused persons indicated at some stage that they are not able to engage counsel but still they could get the services of counsel of their choice at the State expense, it must be said to the credit of the learned counsel Shri Ram Jethmalani and Shri R.S. Sodhi that they have done an excellent job for the appellants and therefore we will like to thank these counsel and also the Additional Solicitor General, who all have rendered valuable assistance to this Court.

19. In view of the importance of the case, we have heard the matter at some length both on questions of law and also on facts.

20. The first objection raised by the learned counsel is on the basis of Sec. 194 that it was not necessary for the High Court to have allotted the case to a particular Judge. The learned Judges of the High Court in their judgment have come to the conclusion that the last part of the Section refers to “The High Court may by special order direct him to try” and on the basis of this phrase the High Court in the impugned judgment has observed that it was even open to the accused to make an application and to get the case transferred or allotted to a Judge. Section 194, Cr. P.C. reads :

“Additional and Assistant Sessions Judge to try cases made over to them – An Additional Sessions Judge or Assistant

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Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

The first part of the Section clearly provides that the Sessions Judge of the Division by general or special order is supposed to allot cases arising in a particular area or jurisdiction to be tried by Additional or Assistant Sessions Judges appointed in the division but the last part of this Section also authorises the High Court to allot the case to a particular Judge keeping in view the fact that in certain cases the Sessions Judge may not like to allot and may report to the High Court or either of the parties may move an application for transfer and under these circumstances it may become necessary for the High Court to allot a particular case to a particular Judge. Thus, this objection is of no consequence. The other objection which has been raised by the learned counsel is about the issuance of a notification by the High Court under Sec. 9(6), Cr. P.C. and by this notification the High Court purported to direct that the trial in this case shall be held in Tihar Jail. Learned counsel appearing for the Delhi Administration on the other hand attempted to justify such an order passed by the High Court by contending that if the High Court had the authority to issue notification fixing the place of sitting it was open to the High Court also to fix the place of sitting for a particular case whereas emphasis by learned counsel for the appellants was that Sec. 9(6) only authorises the High Court to fix the place of sitting generally. So far as in any particular case is concerned, the second part of sub-clause (6) permits the trial Court with the consent of parties to sit at any other place than the ordinary place of sitting.

21. The High Court in the impugned judgment have attempted to draw from proviso which has been a local amendment of Uttar Pradesh. Unfortunately nothing could be drawn from that proviso as admittedly that is not a State amendment applicable to Delhi. Section 9(6), Cr. P.C. nowhere permits the High Court to fix the venue of a trial of a particular case at any place other than the place which is notified as the ordinary place of sitting. It reads thus :

"Sec. 9(6) : The Court of Session shall ordinarily hold its sitting at such place or places, as the High Court may, by notification, specify but if, in any particular case, Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution

and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.”

On the basis of this language one thing is clear that so far as the High Court is concerned it has the jurisdiction to specify the place or places where ordinarily a Court of Session may sit within the division. So far as any particular case is to be taken at a place other than the normal place of sitting it is only permissible under the second part of sub-clause with the consent of parties and that decision has to be taken by the trial Court itself. It appears that seeing the difficulty the Uttar Pradesh amended the provision further by adding a proviso which reads :

“Provided that the Court of Session may hold, or the High Court may direct the Court of Session to hold, its sitting in any particular case at any place in the sessions division, where it appears expedient to do so for considerations of internal security or public order, and in such cases, the consent of the prosecution and accused shall not be necessary.”

22. But it is certain that if this proviso is not on the statute book applicable to Delhi, it cannot be used as the High Court has used to interpret it. That apart, if we look at the notification from a different angle the contention advanced by the learned counsel for the appellants ceases to have any force. Whatever be the terms of the notification, it is not disputed that it is a notification issued by the Delhi High Court under Sec. 9, sub-clause (6), Cr. P.C. and thereunder the High Court could do nothing more or less than what it has the authority to do. Therefore, the said notification of the High Court could be taken to have notified that Tihar Jail is also one of the places of sitting of the Sessions Court in the Sessions division ordinarily. That means apart from the two places Tis Hazari and the New Delhi, the High Court by notification also notified Tihar Jail as one of the places where ordinarily a Sessions Court could hold its sittings. In this view of the matter, there is no error if the Sessions trial is held in Tihar Jail after such a notification has been issued by the High Court.

23. The next main contention advanced by the counsel for the appellants is about the nature of the trial. It was contended that under Article 21 of the Constitution a citizen has a right to an open public trial and as by changing the venue the trial was shifted to Tihar Jail, it could not be said to be an open public trial. Learned counsel also referred to certain orders passed by the trial Court

wherein it has been provided that representatives of the Press may be permitted to attend and while passing those orders the learned trial Judge had indicated that for security and other regulations it will be open to Jail authorities to regulate the entry or issue passes necessary for coming to the Court and on the basis of these circumstances and the situation as it was in Tihar Jail it was contended that the trial was not public and open and therefore on this ground the trial vitiates. It was also contended that provisions contained in Sec. 327, Cr. P.C. clearly provides that a trial in a criminal case has to be public and open except if any part of the proceedings for some special reasons to be recorded by the trial court could be in camera. It was contended that the High Court while exercising jurisdiction under Sec. 9(6) notified the place of trial as Tihar Jail, it indirectly did what the trial Court could have done in respect of particular part of the proceedings and the High Court has no jurisdiction under Section 327 to order trial to be held in camera or private and in fact as the trial was shifted to Tihar Jail it ceased to be open and public trial. Learned counsel on this part of the contention referred to decisions from American Supreme Court and also from House of Lords. In fact, the argument advanced has been on the basis of the American decisions where the concept of open trial has developed in due course of time whereas so far as India is concerned here even before the 1973 Code of Criminal Procedure and even before the Constitution our criminal practice always contemplated a trial which is open to public.

24. In fact, the High Court in the impugned judgment was right when it referred to the concept of administration of justice under the old Hindu Law. But apart from it even the Criminal Procedure Code as it stood before the amendment had a provision similar to S. 327 which was S. 352 of the old Code and in fact it is because of this that the criminal trial is expected to be open and public that in our Constitution phraseology difference from the United States has been there. Article 21 provides :

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

It is not disputed that so far as this aspect of open trial is concerned the procedure established by law even before our Constitution was enacted was as is provided in S. 327 Cr. P.C. (S. 352 of the old Code) :

“Court to be open – (1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any

offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-sec. (1), the inquiry into and trial of rape or an offence under S. 376, S. 376A, S. 376B, S. 376C or S. 376D of the Indian Penal Code shall be conducted in camera:

Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remains, in, the room or building used by the court.

(3) Where any proceedings are held under sub-sec. (2) it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the court."

This was S. 352 in the Code of Criminal Procedure which was Act of 1898. It will be interesting to notice the language of S. 327. It speaks that any place where a criminal court holds its sitting for enquiry or trial shall be deemed to be an open court to which the public generally may have access. So far as the same can conveniently contain them. The language itself indicates that even if a trial is held in private house or is held inside Jail or anywhere no sooner it becomes a venue of trial of a criminal case it is deemed to be in law an open place and everyone who wants to go and attend the trial has a right to go and attend the trial except the only restriction contemplated is number of persons which could be contained in the premises where the Court sits. It appears that the whole argument advanced on behalf of the appellants is on the basis of an assumption in spite of the provisions of S. 327 that as the trial was shifted from the ordinary place where the Sessions Courts are sitting to Tihar Jail it automatically became a trial which was not open to public but in our opinion in view of S. 327 this assumption, the basis of the argument itself is without any foundation and cannot be accepted and argument on the basis of the foreign decisions loses all its significance. So far as this country is concerned the law is very clear that as soon as a trial of a criminal case is held whatever may be the place it will be

an open trial. The only thing that it is necessary for the appellant is to point out that in fact that it was not an open trial. It is not disputed that there is no material at all to suggest that any one who wanted to attend the trial was prevented from so doing or one who wanted to go into the Court room was not allowed to do so and in absence of any such material on actual facts all these legal arguments loses its significance. The authorities on which reliance were placed are being dealt with elsewhere in the judgment.

25. Learned Additional Solicitor General attempted to contend that this is not a question of any constitutional right under Art. 21 and the basis of his argument was that Art. 21 only talks of procedure established by law and if today on the statute book there is S. 327, tomorrow S. 327 may be so amended that it may not be necessary for a criminal trial to be open and on this basis, learned Additional Solicitor General attempted to contend that it does not become a constitutional right at all. It is very clear that Art. 21 contemplates procedure established by law and in my opinion the procedure established by law was as on the day on which the Constitution was adopted and therefore it is not so easy to contend that by amending the Criminal Procedure Code the effect of the procedure established by law indicated in Art. 21 could be taken away. The trend of decisions of this Court has clearly indicated that the procedure must be fair and just. Even expeditious trial has been considered to be a part of guarantee under Art. 21 but in my opinion so far as the present case is concerned it is not necessary to go so far. At present no one could dispute that the procedure established by law as indicated in Art. 21 is as provided in S. 327 and unless on facts it is established that what is provided in S. 327 was prevented or was not permitted, it could not be said that merely because trial was held at a particular place it could be said to be a trial which was not open to public. As indicated earlier on facts there is nothing to indicate although learned counsel also attempted to some extent to suggest that there were restrictions. A person has to pass through two gates, a person has to sign on the gate and had to have a pass or a clearance but in the modern times especially in the context of the circumstances as they exist. On this basis it could not be said that it ceased to be a public trial. It could not be doubted that at one time in this Court the highest Court of the land, any one could freely walk in and sit and attend the Court but today even in this Court there are restrictions and one has to pass through those restrictions but still it could not be said that any one is prevented from attending the Court and therefore merely suggesting the difficulties in reaching the Jail will

not be enough. On the other hand, learned Additional Solicitor General drew our attention to the plan of the Jail and the situation of the premises where the trial was held and it is not disputed that it was not that part of the Jail where the prisoners are kept but was the Office block where there was an approach, people were permitted to reach and the trial was held as if it was held in an ordinary place and it is in this view that as I observed earlier that in fact what the High Court did by issuing a notification under S. 9(6) was not to fix place of trial of this particular case in Tihar Jail. But what could be understood is that High Court by notification made Tihar Jail also as one of the places where a Sessions Court could ordinarily sit and in this case therefore the trial was held at this place. As soon as a trial is held whatever the place may be the provisions of S. 327 are attracted and it will be an open court and every citizen has a right to go and unless there is evidence or material on record to suggest that on the facts in this particular case public at large was not permitted to go or some one was prevented from attending the trial or that the trial was in camera. In fact without an appropriate order it could not be said that what is contemplated under S. 327 or under Art. 21 was not made available to the accused in this case and therefore it could not be contended that there is any prejudice at the trial.

26. There remains however one more question which was raised by the counsel for the appellants that in spite of the prayer made by the accused person during the trial and also in the High Court about the copies of the statement of witnesses who have been examined by the prosecution and were also examined before the Commission (Thakkar Commission) to be provided to the accused so that they may be in a position to use these statements for purposes of contradiction or for other purposes. They had also prayed for the copy of the Thakkar Commission report as the Thakkar Commission was inquiring into the events which led to the assassination of the Prime Minister. In fact, it was contended that the terms of reference which were notified for the enquiry of the Thakkar Commission were more or less the same questions which fell for determination in this case and thus the appellants have been prejudiced and they could not avail of the material which they could use to build up their defence. According to learned counsel not only the accused are entitled to previous statements of witnesses who are examined by the prosecution but they are also entitled to any material on the basis of which they could build up their defence and raise appropriate issues at the trial. Learned counsel relied on number of decisions and also said that the decision of the Supreme Court in Dalmia's case is not binding as in

that case the scope of S. 6 of the Commissions of Enquiry Act was not in question.

27. Whereas Learned counsel for the respondent, the Additional Solicitor General vehemently contended that the language of S. 6 is clear that a witness who is examined before a Commission is protected and that protection is such which clearly indicates that this statement made before the Commission could not be used against him for any other purpose in any other proceeding either civil or criminal. The only exception carved out in S. 6 pertains to his prosecution for perjury and therefore when the language is clear and the exception carved out is clear enough, no other exception could be carved out nor the Section could be interpreted in any manner. According to the Additional Solicitor General the Commission by its regulation and notification clearly made the enquiry a confidential affair and in addition to that there was an amendment of the Act by Ordinance which even provided that if government by notification decided not to place the Report of the Commission before the House of Parliament or Legislature then it was not necessary that it should be so placed before the House and thus the report not only was confidential but even the Parliament had no right to see the report and therefore neither the report nor the statements made before the Commission could be asked for by the accused for the purposes of trial.

28. Soon after the assassination of Smt. Indira Gandhi, the Government of India by notification dated 20-11-84 constituted a Commission under the Commission of Enquiry Act, 1952 (the Act). The Commission was presided over by Mr. Justice M.P. Thakkar, a sitting Judge of this Court. The terms of enquiry notified for the Committee read:

- “(a) the sequence of events leading and all the facts relating to the assassination of late Prime Minister;
- (b) Whether the crime could have been averted and whether there were any lapses or dereliction of duty in this regard on the part of any one of the commission of the crime and other individuals responsible for the security of the late Prime Minister;
- (c) the deficiencies, if any, in the security system and arrangements as prescribed or as operated to in practice which might have facilitated the commission of the crime;
- (d) the deficiencies, if any, in the procedure and measures as prescribed, or as operated in practice in attending to any providing medical attention to the late Prime Minister after the commission of the crime; and whether there was any

- lapse or dereliction of duty in this regard on the part of the individuals responsible for providing such medical attention;
- (e) whether any person or persons or agencies were responsible for conceiving, preparing and planning the assassination, or whether there was any conspiracy in this behalf, and if so, all its ramifications.

29. The Commission was also asked to make recommendations as to corrective remedies and measures that need to be taken for future.

30. It is therefore clear that out of these terms of reference the first term (a) and the last one (e) are such that the evidence collected by the Commission could be said to be relevant for the purposes of this trial.

31. It is significant that the Commission framed regulations under S. 8 of the Act in regard to the procedure for enquiry and regulation 8 framed therein reads:

“in view of the sensitive nature of enquiry the proceedings will be in camera unless the Commission directs otherwise.”

This Regulation made it clear that the proceedings of the Commission will be ordinarily in camera. It would only be in public if the Commission so directs and it is not disputed that so far as recording of evidence is concerned and the proceedings of the Commission it has gone on in camera throughout and even the report, interim and the final report. And then also it was stated by the Commission itself to be confidential. In this perspective the prayer of the appellants has to be considered.

32. Under the Act as it stood before the amendment which was done by Ordinance No. 6 of 1986 normally the Government was supposed to place the report of the Commission under S. 3 sub-cl.(4) of the Act before the House of the People within six months of the submission of the report by the Commission but the Government did not do that. The steps were taken to amend the Commissions of Inquiry Act and on May 14, 1986 the President of India promulgated an Ordinance No. 6 of 1986 namely Commission of Enquiry (Amendment) Ordinance, 1986 by which sub-secs. (5) and (6) were introduced to S. 3 as follows :

“Sub-cl.(5) : The provisions of sub-sec. (4) shall not apply if the appropriate Govt. is satisfied that in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or in public interest, it is

not expedient to lay before the House of People, or as the case may be, the Legislative Assembly of the State, the report or any part thereof, of the Commission on the enquiry made by the Commission under sub-sec. (1) and issues a notification to that effected in the official gazette.

(6) Every notification issued under sub-sec. (5) shall be laid before the House of the People, as the case may be, the Legislative Assembly of the State, if it is sitting as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its resuming and the appropriate Govt. shall seek the approval of the House of People, or as the case may be, the Legislative Assembly of the State to the notification by a resolution moved within a period of 15 days beginning with the day on which the notification is so laid before the House of People or as the case may be the Legislative Assembly of the State makes any modification in the notification or directs that the notification should cease to have effect. The notification shall thereafter have effect as the case may be."

In pursuance of this amendment on May 15, 1986 the Central Government issued a notification under sub-sec. (5) of S. 3 stating "The Central Government, being satisfied that it is not expedient in the interest of the security of the State and in public interest to lay before the House of People, the report submitted to the Government on 19-11-85, and 27-2-86, by Justice M.P. Thakkar, a sitting Judge of the Supreme Court of India appointed under the notification of the Government of India, in the Ministry of Home Affairs No. SO 867 (B). dated the 20th Nov. 1984 thereby notifies that the said report shall not be laid before the House of People." It is interesting that on 20-8-86, Ordinance No. 6 was replaced by Commission of Enquiry (Amendment) Act, 1986 (Act No. 36 of 1986) with retrospective effect. The said notification dated May 15, 1986 was also got approved by the House of People as required under sub-sec. (6) of S. 3 and therefore after the approval of the notification by the House of the People there remains no question of placing report of the Commission before the House.

33. So far as the steps taken by the appellants are concerned, it is no doubt true that an appropriate application in the manner in which it was moved in the High Court was not moved in the trial Court but it could not be doubted that one of the accused persons had even sought these copies in the trial court and the same prayer has been appropriately made during the hearing in the High Court. The proper time for awarding the prayer was in the trial court during

the pendency of the trial as the accused wanted the copies of the previous statements of some of the prosecution witnesses which were recorded during the enquiry before the Thakkar Commission but such a prayer was made and rejected.

34. The High Court rejected this prayer by the impugned judgment against which the present appeal is before us. The High Court relied on the decision of this Court in the case of *Ram Krishna Dalmia v. Justice Tendolkar*, 1959 SCR 279 : (AIR 1958 SC 538), which is referred to henceforth as Dalmia's case. It was contended by learned counsel for the appellants that this case could not be accepted as an authority on interpretation of S. 6 as in that case the scope of S. 6 was not before the court but it was the validity of the provisions which were challenged. Das, C.J. in Dalmia's case while examining the challenge to the validity of the Act and the notification issued thereunder made the following observations (at pp. 546-47 of AIR) :

“The whole purpose of setting up of a Commission of Enquiry consisting of experts will be frustrated and the elaborate process of enquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures and situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of a Commission of Enquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial object it has in view. From this point of view, there can be no objection even to the Commission of Enquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquent in future. But seeing that the Commission of Enquiry has no judicial powers and its report will purely be recommendatory and not effective *proprio vigore*.”

The statement made by any person before the Commission of Enquiry under S. 6 of the Act is wholly inadmissible in evidence in any future proceedings civil or criminal.

35. According to learned counsel, in that case it was not the scope of S. 6 but the validity of the provisions was in question and the observations were only incidental and it cannot be regarded as a binding precedent. The High Court has accepted these observations

of this Court in the judgment quoted above and in our opinion rightly. But apart from it, we shall try to examine S. 6 itself and other provisions relevant for the purpose as to whether the appellants *i.e.* the accused before the trial court were entitled to use the copies of the statement of those prosecution witnesses who were examined before the Thakkar Commission for purposes of cross-examination or to use the report of the Commission or whether it could be handed over or given over to the accused for whatever purpose they intended to use. The learned counsel for the parties on this aspect of the matter have referred to number of decisions of various High Courts and also some of the decisions of the English Courts. They are being dealt with in the judgment elsewhere as in my opinion it is not necessary to go into all of them except examining the provisions of the Act itself.

35A. Section 6 of the Commission of Inquiry Act reads :

“No statement made by any person in the course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement.”

36. One analysis of the provision, it will be found that there are restrictions on the use of a statement made by a witness before the Commission. First is “shall subject him to.....any civil or criminal proceedings except a prosecution for giving false evidence by such statement.” This, in my opinion, is the first restriction. The second restriction, according to me, is spelt out from the words “or be used against him in any civil or criminal proceedings.” Thus if we examine the two restrictions stated above it appears that a statement given in a Commission cannot be used to subject the witness to any civil or criminal proceedings nor it can be used against him in any civil or criminal proceedings and in my opinion it is in the context of these restrictions that we will have to examine the provisions of the Evidence Act which permit the use of a previous statement of a witness and for what purpose. Section 145 read with S. 153 (3) and S. 157 are the relevant provisions of the Evidence Act. S. 145 reads :

“Cross-examination as to previous statement in writing. – A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to these parts of it which are to be used for the purpose of contradicting him.”

This provision permits that a witness may be cross-examined as to the previous statement made by him in writing or reduced to writing relevant to the matters in question without such writing being shown to him or being proved. But it is intended to contradict him by the writing his attention must be drawn to those parts of the writing, and it can be proved. A witness could be cross-examined on his previous statement but if a contradiction is sought to be proved then that portion of the previous statement must be shown to him and proved in due course.

37. Section 155 of the Evidence Act provides for the use of a previous statement to impeach the credit of a witness. Section 155 reads:

“155. Impeaching credit of witness – The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the Court, by the party who calls him –

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe, to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has (accepted) the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) by proof of former statements inconsistent with any part of this evidence which is liable to be contradicted;
- (4) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.”

38. This section provides that the credit of a witness may be impeached in the following ways by an adverse party with the consent of the court by the party who calls him and the third sub-clause refers to a former statement which is inconsistent with the statement made by the witness in evidence in the case and it is permissible that the witness be contradicted about that statement. The third provision is S. 157 which provides for the use of a previous statement for corroboration. It reads:

“157. Former statements of witness may be proved to corroborate later testimony as to same fact. In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.”

A perusal of these three sections clearly indicates that there are two purposes for which a previous statement can be used. One is for cross-examination and contradiction and the other is for corroboration. The first purpose is to discredit the witness by putting to him the earlier statement and contradicting him on that basis. So far as corroboration is concerned it could not be disputed that it is none of the purposes of the defence to corroborate the evidence on the basis of the previous statement. Section 145 therefore is the main section under which relief was sought by the accused. The use for which the previous statement was asked for was to contradict him if necessary and if it was a contradiction then the earlier statement was necessary so that the contradiction be put to the witness and that part of the statement can be proved.

39. To my mind, there could be no other purpose for which the appellants could use the previous statements of those witnesses. Contradiction could be used either to impeach his credit or discredit him or to pull down or bring down the reliability of the witness. These purposes for which the previous statements are required could not be said to be purposes which were not against the witnesses. The two aspects of the restrictions which S. 6 contemplates and have been discussed earlier are the only two aspects which could be the result of the use of these statements. I cannot find any other use of such previous statements in criminal proceedings. It is therefore clear that without going into the wider questions even a plain reading of S. 6 as discussed above will prohibit the use of the previous statements at the trial either for the purposes of cross-examination to contradict the witness or to impeach his credit. The only permissible use which has been provided under S. 6 which has been discussed earlier and therefore the Courts below were right in not granting the relief to the accused.

40. The report of the Commission was also prayed for although learned counsel could not clearly suggest as to what use report of the Thakkar Commission could be to the accused in his defence. The report is a recommendation of the Commission for consideration of the Government. It is the opinion of the Commission based on the statements of witnesses and other material. It has no evidentiary value in the trial of the criminal case. The courts below were also justified in not summoning the reports.

41. Learned counsel for parties referred to number of decisions, Indian and Foreign and are being dealt with by my learned colleague in this judgment. But in view of the discussions above I do not find it necessary to go further into the matter.

42. Learned counsel for Appellant No. 1 Satwant Singh also made a reference to some of the questions which were raised before the High Court in respect of the post-mortem, although learned counsel appearing for the other two appellants did not seriously raise those questions. It is apparent that in the facts of the case as the evidence stands the question of post-mortem or a fuller post-mortem was necessary or not loses all its significance. There is no dispute that she died as a result of the gun shot injuries which was inflicted by Beant Singh and Satwant Singh, one who shot from his service revolver and other from the carbine. In view of such clear evidence about the cause of the death, the post-mortem examination loses all its significance. It becomes important only in cases where the cause of death is to be established and is a matter of controversy.

43. Before I go to the merits and deal with the evidence in the case, I will dispose of preliminary objection raised by the learned Additional Solicitor General as to the scope of the appeals before us. He urged that under Art. 136 of the Constitution this Court is not expected to go into the questions of fact when there are concurrent findings of fact recorded by the courts below. The learned counsel apart from Art. 136 relied upon a decision reported in the case of *Pritam Singh v. The State*, AIR 1950 SC 169 where Fazal Ali, J. said :

“It would be opposed to all principles and precedents if we were to constitute ourselves into a third court of fact and after reweighing the evidence comes to the conclusion different from that arrived at by the trial Judge and the High Court.”

Similarly in *Ram Raj v. State of Ajmer*, 1954 SCR 1133 : (AIR 1954 SC 462) Chief Justice Mahajan, observed at page 1134 (of SCR) : (at p. 462 of AIR):

“Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of decision appealed against this court does not exercise its overriding powers under Art. 136(1) of the Constitution and the circumstances that because the appeals have been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which should have been raised in the High Court. Even in the final hearing only those points can be urged which are fit to be urged and at the preliminary stage when the leave to appeal is asked for.”

Even in a recent decision Justice Thakkar stated (AIR 1983 SC 753 at p.755):

“A concurrent finding of fact cannot be reopened in an appeal unless it is established: firstly, that the finding is based on no evidence or record; secondly, that the finding is perverse, it being such as no reasonable person would have arrived at even if the evidence was taken at its face value; or thirdly, the finding is based and built on inadmissible evidence which evidence if excluded from the vision would negate the prosecution case or substantially discredit or impair it; or fourthly, some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.”

These are the principles laid down by this court and keeping these in view I will attempt to examine the High Court judgment. I may however, mention that where the High Court has reached conclusions based on partly inadmissible evidence and partly on circumstances which are not justified on the basis of evidence, or partly on facts which are not borne out from the evidence on record it cannot be contended that in an appeal under Art. 136 this court will not go into the facts of the case and come to its own conclusions. The case on hand is one of such cases and some of the findings of fact reached by the High Court could not be said to be such which are concurrent or conclusive. We were therefore put to the necessity of examining the evidence wherever it was necessary.

44. The other ground urged on behalf of the appellants relates to the relevancy of evidence on conspiracy in view of S. 10 of the Evidence Act. It will be worthwhile to deal with this question of law at this stage. Sections 120-A and 120-B of the Indian Penal Code which deals with the question of conspiracy. Section 120-A reads :

“When two or more persons agree to do, or cause to be done —

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designed a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

Section 120-A provides for the definition of criminal conspiracy and it speaks of that when two or more persons agree to do or cause

to be done an act which is an illegal act and S. 120-B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that S. 10 of the Indian Evidence Act was enacted. Section 10 reads:

“Things said or done by conspirator in reference to common design – Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

This section mainly could be divided into two: the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the Section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to S. 120-A where it is provided “When two or more persons agree to do, or cause to be done.” This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be therefore necessary that a *prima facie* case of conspiracy has to be established for application of S. 10. The second part of Section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear that this second part, permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in S. 10 in cases of conspiracy. The second part operates only when the first part of the Section is clearly established i.e. there must be reasonable

ground to believe that two or more persons have conspired together in the light of the language of S. 120-A. It is only then the evidence of action or statements made by one of the accused, could be used as evidence against the other. In *Sardar Sardul Singh Caveeshar v. State of Maharashtra*, (1964) 2 SCR 378 : (AIR 1965 SC 682 at p. 687), Subba Rao J., (as he then was) analysed the provision of S. 10 and made the following observations :

“This section, as the opening words indicate will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a *prima facie* evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression in reference to their common intention is very comprehensive and it appears to have been designedly used to give it a wider scope than the words ‘in furtherance of’ in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only ‘as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.’ It can be used only for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the Section can be analysed as follows : (1) There shall be a *prima facie* evidence affording a reasonable ground for a court to believe that two or more persons are members

of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; (5) it can only be used against a co-conspirator and not in his favour."

In the light of these observations and the analysis of S. 10 we will have to examine the evidence led by prosecution in respect of conspiracy.

45. We first take the case of Balbir Singh. Balbir Singh was an Officer of the Delhi Police in the cadre of Sub-Inspector. He was posted on duty at the PM's residence on security. On 31-10-84 in the morning he was not on duty but his duty was to commence in the evening and on that day at Akbar Road gate. It appears that when he reported for duty in the normal course he was asked to go to the Security Police Lines and at about 3 A.M. on Nov. 1, 1984 he was awakened from his sleep and his house was searched by SI Mahipal Singh PW 50, Constable Hari Chand, PW 17 and Inspector Shamsheer Singh. Nothing except a printed book on Sant Bhindranwale Ex. PW 17-A was recovered. It is alleged that about 4 A.M. he was taken to Yamuna Velodrome. He was kept there till late in the evening when he is reported to have been released. This custody in Yamuna Velodrome is described by Sh. Kochhar, PW 75 as *de facto* custody. But there is no evidence or no police officer examined to say that he allowed this accused to go in the evening on Nov. 1, 1984. Thereafter he is alleged to have been arrested on Dec. 3, 1984 at Najafgarh Bus-stand. When his personal search was taken and certain articles were recovered from his possession including a piece of paper which is Ex. PW 26B. On Dec. 4, 1984 he was produced before the Magistrate who remanded him to police custody. Thereafter it is alleged that he expressed his desire to make a confession but when produced before the Magistrate he refused to make any statement.

46. The allegations in the charge-sheet against this accused if summarised are: that Balbir Singh like the other accused persons has expressed his resentment openly holding Smt. Indira Gandhi responsible for the 'Bluestar Operation'. He was planning to commit the murder of Smt. Gandhi and he discussed these matters with Beant Singh deceased who had similar plan to commit the murder. He also shared

his intention and prompted accused Satwant Singh to commit the murder of Smt. Gandhi and finally discussed the matter with him on Oct. 30, 1984. In the first week of Sept. 1984 a falcon (baaz) happened to sit on the tree near the Reception gate of the Prime Minister's house in the afternoon at about 1.30 P.M. Balbir Singh spotted the falcon and called Beant Singh there. Both of them agreed that it has brought a message of the Tenth Guru of Sikhs that they should do something by way of revenge of the 'Bluestar Operation'. Thereafter they offered 'Ardas'.

47. These allegations, the prosecution has attempted to prove by the evidence of the following witnesses:

- (i) S.I. Madal Lal Sharma, PW 13
- (ii) Constable Satish Chandra Singh, PW 52
- (iii) Sub-Inspector Amarjit Singh, PW 44, and
- (iv) Confession of Satwant Singh, PW 11C.

The prosecution also strongly relied upon the document Ex. PW/26B which was recovered from the possession of the accused when he was arrested at Najafgarh Bus-stand. His leave applications which are Ex. PW 26/E1 to E5 along with his post-crime conduct of absconding are also relied upon.

48. According to the accused, the document Ex. PW 26B was not recovered from his possession as alleged by the prosecution. He also contests his arrest at Najafgarh Bus-stand and says that it is just a make-believe arrangement. According to him, he was all along under police custody right from the day when he was taken to Yamuna Velodrome on November 1, 1984. In fact he was not allowed to go out and the question of his abscondence does not arise. He was also not put any question on abscondence under Sec. 313 examination.

49. Now, we will take first, the arrest of this accused on 1st November. It is not disputed that on 1st November late at night his house was searched and a printed book – Sant Bhindranwale – was seized from his house and he was brought to Yamuna Velodrome. It is also not in dispute that the prosecution evidence itself indicates that up to the evening the next day he was seen in the Yamuna Velodrome.

50. It will be better here to describe what this Yamuna Velodrome is? From the prosecution evidence what has emerged is that this is a place where there are number of offices but Police has reserved a portion of this building to be used for interrogation and investigation. Normally when a person or a witness is brought for interrogation or investigation at a Police station, some record has to

be made as there is a general diary although diaries may or may not be filled in but a duty is cast on the Station House Officer of a Police Station to maintain the movements of the Police Officers and also to note down the activities especially when it is connected with the investigation of an important case. But it appears that all about the preliminary investigation of this case was going on at Yamuna Velodrome, witnesses and persons were brought here, detained or kept, and interrogated. We do not have any further evidence in regard to this place.

51. According to the prosecution, this accused was at Yamuna Velodrome up to the evening of that day and thereafter he was allowed to go and then he absconded. As a matter of fact this part of the story becomes very important in view of the further facts alleged by the prosecution that the investigating officer got some information through some one that this accused who was wanted would appear at the time and place indicated. But there is no evidence as to who asked this accused to go. He was a suspect in the criminal conspiracy. He could not have gone away of his own accord. Some responsible officer must have taken the decision but it is unfortunate that no officer has been examined to state that "I thought that his presence was not necessary and therefore I allowed him to go." Learned Additional Solicitor General appearing for the State before us also was asked if he could lay his hands at any part of the evidence of any one of the witnesses who could say that before him this person was allowed to go from the Yamuna Velodrome. There is no evidence on this aspect of the matter at all and therefore we are left with the only evidence that this person was arrested at midnight in the late hours on 1st November and was carried to Yamuna Velodrome and was seen there by some prosecution witness till the evening of the next day.

52. Then the other aspect of the matter which is of some importance is about the prosecution allegation that he was absconding from 1st or 2nd November till 3rd Dec. It is significant that no witness has been examined to indicate that he went to find him out either at his residence or at any other place in search of him and that he was not available. There is also no evidence produced to indicate that in spite of the fact that during investigation police wanted to arrest him again but he was not available at his known address. It is perhaps of absence of evidence as to absconding the trial court when examined this accused under Sec. 313 did not put him any question about his abscondence. It is therefore clear that the abscondence as a circumstance could not be used against him.

53. Let us now examine the story of the prosecution that this accused was arrested at Najafgarh Bus-stand. It is alleged that Sh. Kochhar, the Investigating Officer got some information that this accused was expected to appear at that place on 3rd December, 1984. It was not immediately after the assassination. It was after a month. The people could come forward to become witness. But no independent witness has been examined in support of the arrest or seizure from the accused. It may be as technically argued by the learned Additional Solicitor General that the presence of public witnesses under the scheme of Code of Criminal Procedure is required when there is search and seizure from the house or property of the accused but not when a person is arrested and something is recovered from the personal search. But it is well known that in all matters where the police wants that the story should be believed they always get an independent witness of the locality so that that evidence may lend support to what is alleged by the police officers. Admittedly for this arrest at Najafgarh and for the seizure of the articles from the person of this accused there is no other evidence except the evidence of police officers. Independent witness in this case would be all the more necessary especially in view of what has been found above as his release after the earlier arrest is not established, and his abscondence is not proved. In such a controversial situation the presence of an independent witness from the public, if not of the locality, would have lent some support to the case of the prosecution. It may also be noted that according to Mr. Kochhar, that the accused appeared at the Bus-stand but they have not been able to disclose from where he appeared. Whether he got down from a bus, if so from which bus – city or outstation bus? How he appeared there is all mystery. Nobody bothered to notice of his coming. It is said that he had a DTC bus ticket. Nobody examined it. Perhaps there was nothing to examine. If the Police Officers had gone with prior information to arrest the absconding accused who was involved in such an important crime, they could have taken an independent witness with them. It is again interesting to note that instead of searching him and performing the formalities of arrest at the place where the accused appeared, he was taken to a place said to be the office of the Electricity Board. The search and seizure took place there. Some articles were recovered from his possession. Most of the articles recovered are mere personal belongings. There was also a piece of paper since marked as Ex.-PW 26/B. The Police did not think it necessary to have an independent witness even for the seizure memo, when particularly some important piece of evidence was recovered from his possession. The reply of

the learned Additional Solicitor General was that in law it was not necessary. The Investigating Officer when questioned in cross-examination answered that nobody was available or none was prepared to be a witness in this matter. It is unthinkable at a public place and that too at the Bus-stand. Learned Additional Solicitor General also attempted to contend that the circumstances in Delhi after the assassination of the Prime Minister were such that no witness was prepared to come forward. It appears that for every problem this situation is brought as a defence but in our opinion, this would not help them so far as this matter is concerned. We are talking of 3rd December which was more than a month after the unrest in Delhi. It is very difficult to believe that a citizen in this capital did not come forward to be a witness for seizure memo. The arrest of the accused in the circumstances appears to be only a show and not an arrest in actuality.

54. Learned Additional Solicitor General appearing for the State frankly conceded that if the release of this accused after his arrest on 1st November is not established and his abscondence is not proved, then the story of his arrest on 3rd December with the recovery of the articles loses all its significance. It is indeed so.

55. In the context of what has been discussed above it is apparent that the arrest of the accused on 3rd December and the recovery of these articles from his person have not been proved satisfactorily and therefore could not be of any consequence against this accused.

56. The prosecution attempted to prove the recovery of Ex. PW 26/B on the basis of an entry in the Malkhana Register of Tughlak Road Police Station. Entry 986 in the Malkhana Register which is made on December 3, 1984 according to the learned Additional Solicitor General, contains a verbatim copy of the seizure memo Ex.-PW 35A and it indicates the fact of recovery of PW-26/B and therefore proves that it was recovered from the appellant upon his arrest and search on that day. Here again there is an interesting situation. There is an endorsement in the Malkhana Register stating that the DTC ticket which the accused carried and the paper containing the dates in English Ex. PW 26/B were not deposited. The Malkhana Register therefore is of no help to the prosecution. If they were taken back for any further investigation they could have made an entry to that effect in the general diary. The nature of entry in the Malkhana Register only shows the recovery of certain articles and a note that the two documents although are said to be recovered but they were not brought and deposited at the Tughlak Road Police Station. It is therefore clear that although in the seizure memo the

mention of the two documents including Ex.-PW 26/B is there, they in fact did not reach the Police Station or see the light of the day.

57. In view of these infirmities we cannot accept that the accused was arrested on 3rd December as alleged by the prosecution. So the recovery of Ex. PW 26/B is doubtful. However, we may refer to the said document as it has been said to be one of the most important pieces of evidence as the High Court has described it.

58. The document can be taken to have been written in the handwriting of Balbir Singh as that is not seriously contested before us. The document is a sheet of paper in which we find certain entries. The document is reproduced at Pages Nos. 57-58 of the judgment prepared by my learned brother Shetty, J.

59. If this document is considered to be a memorandum of events prepared by this accused relating to his conspiracy, why should he carry it in an atmosphere surcharged with emotion against the Sikhs. Not only that, this person knew that he was an accused in such an important case where whole public opinion is against him. He also knew that he was absconding and he also knew that he was carrying in his pocket such an important piece of evidence. Was it his intention that he should keep it readily available so that he could oblige the prosecution whenever they needed? There is no other possible reason why this person should keep this document with him all the time. On our questioning the learned Additional Solicitor General about this strange behaviour of the accused, he also could not explain as to why the accused could have thought of carrying such a piece of paper in his pocket.

60. Apart from it, if the document is looked at as it is we see nothing in it except a mention of few dates and few events. It even does not indicate that with those events whether this accused was connected in any manner. It is also significant that this document was not with this accused when his house was searched and he was arrested on the night of 1st November, 1984. If the accused after that arrest was not released at all and there was no occasion for him to go away then one fails to understand as to how this document came in his possession? The explanation suggested by the learned counsel for the accused appears to be the most probable. As indicated from other evidence, the accused was preparing to give a statement or a confession and therefore he was given the notes and he must have recorded those dates to facilitate the statement that he was planning or he was made to give which ultimately he chose not to give at all.

61. Looking to this document the only material which could be said to be of some significance is the words 'felt like killing'. But

there is no reference after those words as to who was intended to be killed. There is also no indication as to whose feelings are noted in this piece of paper. There are entries in this document which refer to meetings, visits, persons, visiting somebody's house but it is not clear as to whom they refer and what is intended when this reference is made. Beant Singh has been referred to in this document more than in one place. At one place, there is a reference to Beant Singh with eagle. But there is no reference to a joint Ardas or this accused or Beant Singh telling that it had brought a message or they should take revenge. The entry does not suggest that the accused has anything to do with the eagle. If there is anything, it is against Beant Singh.

62. A perusal of this whole document also shows that there is no reference at all to Beant Singh and his plan to kill the Prime Minister. Nowhere it is mentioned about the bomb or grenade with which he was planning to eliminate the Prime Minister before 15th August, 1984. There is also no reference about Beant Singh conspiring with this accused or *vice versa*. Kehar Singh is not at all in the document. Satwant Singh, however, is mentioned against 30th October. But it does not give an indication where? The prosecution has connected it with the evidence of PW 52 who was the Sentry in the Prime Minister's security. We will consider the evidence of this witness a little later.

63. Under these circumstances it is very clear that except the mention of 'Bluestar Operation' and 'felt like killing' there is nothing in this document which is of any significance. If the document is read as it is, we see nothing incriminating against this accused. Unfortunately it appears that the High Court read in this document what was suggested by the prosecution without considering whether it could be accepted or not in the absence of evidence on record. Admittedly, there is no such evidence at all in this case.

64. Satish Chandra Singh, PW 52, who has been produced to prove the meeting of Balbir Singh with Satwant Singh was for the first time examined during the investigation on 7-2-85 that is after the trial had commenced. He has stated that when he was on duty on October 30, 1984 Satwant Singh came and talked to Balbir Singh. But he frankly admitted that he could not follow what they talked as he did not know Punjabi. What value we could attach to the testimony of this witness. It is impossible to believe him.

65. In view of what we have noticed, even if the document is accepted to have been written by the accused, still there is nothing in it on the basis of which an inference of conspiracy could be drawn. There must be evidence to indicate that the accused was in agreement

with the other accused persons to do the act which was the ultimate object which was achieved on 31-10-1984. This document therefore although described by the learned Judges of the High Court as very important piece of evidence is nothing but a scrap of paper.

66. Excluding from consideration this recovery of a piece of paper Ex. PW 26/B, what remains has been analysed by the High Court in the judgment in the following words :

“Summing up then the evidence against Balbir Singh leaving out of account for the time being the confession of Satwant Singh and the evidence of Amarjit Singh the position is as follows :

- He was an Officer on security duty at the PM's house. He knew Beant Singh and Satwant Singh as well. He shared the indignation of Beant Singh against Smt. Gandhi for 'Operation Bluestar', and was in a mood to avenge the same. He went on leave on 25-6-84 to 26-7-84. On his return he met Beant Singh and Amarjit Singh. He was present on the occasion of the appearance of eagle and their association on that date is borne out by Ex. PW 26/B. He is known to have talked to Satwant Singh on 30th October, 1984.”

Unfortunately, the learned Judges of the High Court when they came to the conclusion that Balbir Singh knew Beant Singh and Satwant Singh well, have not referred to any piece of evidence in this case which establishes that they knew each other well. The learned Additional Solicitor General appearing for the State also has not been able to point out any piece of evidence on the basis of which this could be inferred. This accused being a Sikh also is referred to but there were number of Sikh officers posted at the house of the Prime Minister and merely because he was a Sikh it could not be said that he became a party to the conspiracy or he was in conspiracy or he knew Beant Singh and Satwant Singh well. Similarly as regards the observations made by the High Court that Balbir Singh shared indignation of Beant Singh against Smt. Gandhi and was in a mood to avenge for the 'Bluestar Operation', there is no evidence to support it. From the testimony of S.I. Madan Lal Sharma, PW 30 all that we could gather is that after the 'Bluestar Operation' Balbir Singh was in an agitated mood and he used to say that the responsibility of damaging the Akal Takht lies with Smt. Gandhi and it would be avenged by them. From this it cannot be inferred that Balbir Singh wanted to take revenge against the Prime Minister along with Beant

Singh. This is not what is said by the witness. If expression of anger or protest on the 'Bluestar Operation' could be used as a piece of evidence or a circumstance against accused then all that members of the Sikh community who felt agitated over the 'Bluestar Operation' must be held as members of the conspiracy.

67. So far as taking leave is concerned there is nothing on the basis of which any significance could be attached to it. There is no material to indicate that during the leave Balbir Singh met Beant Singh or anyone else or was in any manner connected with the conspiracy or was doing something in pursuance of the agreement of conspiracy between them. Merely because on certain dates he was on leave no inference could be drawn. The High Court relied on the fact that after returning from leave this accused met Beant Singh and Amarjit Singh but on this meeting also there is no other evidence except the evidence of Amarjit Singh PW 44 which we will deal with a little later.

68. So far as appearance of falcon and offering of ardas is concerned it is admitted that appearance of falcon is considered, by the Sikh community, as a sacred thing as falcon is supposed to be a representative of the Guru and if therefore this accused and Beant Singh offered ardas nothing could be inferred from this alone. As even the High Court observed that:

"Nothing unusual or abnormal about the incident as any religious Sikh seeing the appearance of a falcon could offer the Ardas."

So far as meeting with Satwant Singh is concerned on October 30, 1984 the only evidence of that fact is the evidence of Satish Chandra Singh PW 52 about whom I have discussed little earlier and nothing more need be stated here.

69. With this we are now left with the evidence of Amarjit Singh who is an important witness as per the prosecution. It has come on record that his statement during investigation was recorded thrice; twice by Police under Section 161 and then under Sec. 161 Cr. P.C. The first statement is Ex. PW 44 which was recorded on November 24, 1984 after 25 days of the incident and the second statement PW 44 DB was recorded on December 19, 1984. On December 21, 1984 the third statement PW 44A under Sec. 164 of the Code came to be recorded. In the first statement there is no involvement of Balbir Singh. The second statement according to the witness was recorded at his own instance. He states that it did not occur to him that assassination was the handiwork of Balbir Singh and Kehar Singh. After he had learnt about the firing and death of Smt. Indira Gandhi

he recalled certain things and went to Shri R.P. Sharma who recorded his statement on 24-11-84. According to him, he recalled bit by bit and that was the reason, he gave the subsequent two statements. If we carefully peruse these statements it is clear that the entire approach of the High Court appears to be erroneous. Amarjit Singh PW 44 states before the Court as follows:

“In the first week of August 1984 I had a talk with Beant Singh. Then he told me that he would not let Mrs. Indira Gandhi unfurl the flag on 15th August. Shri Balbir Singh also used to tell me that if he could get a remote control bomb and his children are sent outside India then he also could finish Mrs. Indira Gandhi. I used to think that he was angry and I used to tell him that he should not think in these terms. In the third week of October, 1984, Balbir Singh told me that Beant Singh and his family have been to the Golden Temple along with Kehar Singh her Phoopha. He further told that Beant Singh and Constable Satwant Singh had taken Amrit in Sector 6, R.K. Puram, New Delhi at the instance of Kehar Singh.”

In his first statement PW 44 DA which has been exhibited during his cross-examination admittedly there is no reference to Balbir Singh at all. No reference to Balbir Singh telling the witness that if he could get a remote control bomb and his children are sent outside India, he could also finish Mrs. Indira Gandhi. There he has stated: “In the end of September, 1984 S.I. Balbir Singh met me once in the Prime Minister’s house and told me that Beant Singh wanted to kill the Prime Minister before 15th August, he (Beant Singh) agreed to kill her with a grenade and remote-control but his task was to be put off because the same could not be arranged. Actual words being ‘In do cheeson ka inte zam nahim ho saka isliye baat tal gayi.’ Similarly in his earlier statement Ex. PW 44 DA what this witness said was :

“In the third week of October, 1984 Beant Singh S.I. met me and told me that he had procured one Constable. Actual words being ‘October 1984 ke tisare hafte main Beant Singh mujhe mila usne bataya ki usne ek sipahi pataya hai’ and that now both of them would put an end to Smt. Indira Gandhi’s life very soon.”

These portions of the statement which were put and proved from Amarjit Singh as his first statement recorded by the police clearly go to show that he had only alleged these things against Beant Singh. What he did later was to improve upon his statement

and introduce Balbir Singh also or substitute Balbir Singh in place of Beant Singh. The only other inference is that he was himself a party to that conspiracy. Otherwise there is no explanation why he should keep on giving statement after statement, that too after 25 days of the incident. The second statement was recorded on December 19 and a third statement on December 21, 1984. It clearly shows that he was a convenient witness available to State whatever was desired from him. He appears to have become wiser day by day and remembered bit by bit is certainly interesting to remember.

70. It could not be doubted that the two versions given out by this witness are not such which could easily be reconciled. In fact in his first version there is nothing against Balbir Singh. In his second statement he has tried to introduce things against him. This apparently is a clear improvement. It is well-settled that even delay is said to be dangerous and if a person who is an important witness does not open his mouth for a long time his evidence is always looked with suspicion but here we have a witness who even after 25 days gave his first statement and said nothing against the present accused and then even waited for one more month and then he suddenly chose to come out with the allegations against this accused. In our opinion, therefore, such a witness could not be relied upon and even the High Court felt that it would not be safe to rely on the testimony of such a witness alone.

71. Apart from it, the evidence which he has given is rather interesting. According to him Beant Singh and Balbir Singh were so close to him that they used to keep him informed about their plans to assassinate the Prime Minister of India. But relation with Balbir was such that he was not even invited when Balbir Singh was married and therefore it was nothing but casual but still he claims that he had so much of close association that he used to be taken in confidence by these two persons. That means that he is one of the conspirators or otherwise he would not have kept quiet without informing his superiors as it was his duty to do when the Prime Minister was in danger.

72. In view of this, it is clear that there is no evidence at all to establish *prima facie* participation of this accused in conspiracy or any evidence to indicate that he had entered into any agreement to do an unlawful act or to commit an offence along with the other accused persons. Therefore, in absence of any evidence in respect of the first part of Sec. 10 which is necessary it could not be contended that the confession of Satwant Singh could be of any avail or could be used against this appellant.

73. Before parting with this witness, one more thing may be noted. The High Court, in order to explain that this witness Amarjit Singh did not refer to Balbir Singh in his first statement on 24-11-84 stated something out of imagination. The High Court has quoted his statement on 24-11-84 in these words :

“He is also reported to have said that Beant Singh had wanted to kill Smt. Gandhi before 15th of August and that he had agreed to do so if grenade and remote control were available.”

In this context, the use of the word ‘agreed’ and word ‘he’ the High Court felt that they refer to Balbir Singh and none else. This appears to be an explanation given by Amarjit Singh in his statement in Court and the High Court felt that it could accept it. It is clear that where he says ‘agreed’ and ‘he’ in his statement on November 24, 1984 he had not named Balbir at all. It is only now in his statement at trial that he grew wiser and made an attempt by way of this explanation. It is rather unfortunate that the High Court felt that this explanation should be accepted. The statement against Balbir coming for the first time on 21st December, 1984 itself in the light of the settled criminal jurisprudence of this country ought to have been rejected outright. Secondly, the High Court found corroboration from the confession of Satwant Singh. So far as the statement or the confession of Satwant Singh is concerned, it could not be used against this accused as we have earlier indicated.

74. Thirdly so far as falcon incident is concerned, we do not know how the High Court felt that that incident corroborates the evidence of Amarjit Singh when Amarjit Singh alone talks of the falcon incident. There is no basis for this conclusion of the High Court.

75. Lastly, it may be noted that so far as this accused is concerned, even Bimla Khalsa, the wife of Beant Singh does not mention anything.

76. In the light of the discussions above, in our opinion, so far as this accused is concerned there is no evidence at all on the basis of which his conviction could be justified. He is therefore entitled to be acquitted.

Kehar Singh :

77. The finding of guilt recorded by the High Court against Kehar Singh is a mixture of both relevant and irrelevant evidence adduced by the prosecution. We will consider only those that are most important and relevant. Material evidence against Kehar Singh is the evidence of PW 65, Bimla Khalsa wife of Beant Singh. She was

examined by the Police on 16th January, 1985 and 19th January, 1985. This witness although has been declared hostile, but her statement could not be discarded in toto merely because on certain questions she has chosen not to support prosecution. It is true that her statement for the first time during investigation was recorded on 16th January, 1985 but it could not be disputed that after all she is the wife of the main accused in this case. She has lost her husband on 31st October. She was placed in a situation where it would have been very difficult for her to compose herself in a manner in which she could give her statement immediately. It is nobody's case that she has any grudge against anybody.

78. Important circumstances which emerge from the testimony of this witness are:

- (i) She was married to Beant Singh in 1976 through the good offices of her maternal uncle Gurdeep Singh.
- (ii) Kehar Singh's wife Jagir Kaur hailed from Matloya and she (Bimla) used to call Kehar Singh and Jagir Kaur Phoophi and Phoopha and there was close friendship between the two families. Rajendra Singh son of Kehar Singh who was a friend of Beant Singh and often used to have drinks with him. In her statement in Court later she also stated that the wives of Rajendra Singh and Shamsher Singh, brother of Beant Singh belonged to the same 'biradari'.
- (iii) Kehar Singh started visiting their house more often after the 'Operation Bluestar'. Beant Singh and Kehar Singh had talked about the destruction of the Akal Takht in the Golden Temple complex on two or three occasions but became silent when she came.
- (iv) In the last week of July, Beant Singh told her that he had gone to the Gurudwara at Moti Bagh at the instance of Kehar Singh and that they heard highly provocative and inciting speeches there. Beant Singh had told her that he would become a "Shaheed" and that she should look after the children or God will look after them but he never told her that he wanted to kill Smt. Indira Gandhi.
- (v) In the middle of September, 1984 the birthday of the grandson of Ujagar Singh Sandhu was celebrated at his residence at Moti Bagh. Though they had not received any invitation, at Kehar Singh's instance they attended the party where many inciting speeches were delivered.
- (vi) On 13-10-84 her husband told her that he would be taking Amrit on 14-10-84 and when she asked for the reason, he told her that it was in order to give up drinking.

- (vii) On 17-10-84 she was sent to Gurudwara Sis Ganj along with Kehar Singh and Jagir Kaur to take Amrit there which she did.
- (viii) On the evening of 17-10-84 Kehar Singh came and was closeted together with Beant Singh on the roof of the house for 15 to 18 minutes. Satwant Singh who had come to their house on the two earlier occasions in the first week of October also came. First two talked in low tone and later all the three had meals together. She asked Kehar Singh what they were talking about on the roof. He said it was about asking somebody to take Amrit. When she said why it needed to be kept secret from her, he became silent but he complained to her husband later about her having questioned him.
- (ix) On 20th October, 1984 Beant Singh's family went to Amritsar with Kehar Singh and his wife. Originally Beant Singh and Kehar Singh had intended to go alone. She has said that she would also like to go there and that all of them could go in March, 1985. Then he insisted that she should also go with him, it was decided that Jagir Kaur should also go. At Amritsar they stayed with one M.R. Singh that evening while Bimla Khalsa and children and Jagir Kaur were listening to the Kirtan, Beant Singh and Kehar Singh went to see the Akal Takht. She also wanted to go but she was told she could see it next morning. Next morning also, Beant Singh and Kehar Singh left for Akal Takht early in the morning leaving them to follow later. When they were all there again Beant Singh and Kehar Singh went away somewhere and returned 3 to 4 hours later. On their way back again the two went away alone to some place for a few minutes. They purchased a cassette and a photo of Bhindranwale. Beant Singh stayed behind saying that to meet some one and join them at the railway station. They returned to Delhi on 21st October, 1984.
- (x) On 24-10-84 Beant Singh insisted on her taking Amrit again at R.K. Puram Gurudwara but she refused. After he returned from the night duty he went along with Satwant Singh on a Scooter.

79. There is only one variation between the previous statement and evidence in Court. That relates to identification of Satwant

Singh. In the Court she attempted to say that he was a boy and later explained that at that time he had no beard but the manner in which the boy has been described and the occasions when the boy had come to their house, there is hardly any doubt left. Apart from it, so far as Satwant Singh is concerned even if we omit the evidence of Bimla Khalsa, it is not material. But it could not be doubted that from her evidence that the above circumstances have been established.

80. Next important circumstance is the 'Vak'. It is alleged that when early morning the worship starts in a Gurudwara, the Granth Sahib is opened at random and some message from a page which is so opened is written on the black board as a 'Vak' for the day. It is proved by Bimla Khalsa that Ex. P/55A was written in the handwriting of Beant Singh. It was a 'Vak' of a particular day which was in the following terms :

"One gets comfort on serving the Guru. Then miseries do not come near. Birth and death come to an end and the black (wicked) do not have effect."

About this 'Vak' having been taken out in the Gurudwara, there is some controversy as the witness produced for that purpose Surendra Singh, PW 55 was not in a position to produce the diary but so far as Beant Singh is concerned, the 'Vak' written by him on a piece of paper in Yellow ink in Gurumukhi with date 13-10-84 was put on it has been proved by the evidence of Bimla Khalsa. This was admittedly found from the quarters of Beant Singh on 31-10-84 and it was lying inside the book 'Sant Bhindranwale'.

81. As far as the incident on 17th October is concerned, Bimla Khalsa in clear terms stated that Kehar Singh and Beant Singh had secret talks. She wanted to know it, but she was not given to understand. This kind of secret talk with Beant Singh which Kehar Singh had, is a very significant circumstance. Apparently Kehar Singh being an elderly person did not indicate to her about their plan. If the attempt of Kehar Singh was to dissuade Beant Singh then there was no occasion for him to keep the matter secret from his wife. On the contrary he should have indicated to his wife also what Beant Singh was planning. These talks therefore as proved by Bimla Khalsa go a long way in establishing Kehar Singh being a party to the conspiracy.

82. Her evidence also indicates that Beant Singh took Amrit on 14th and Beant Singh kept his golden 'kara' and ring in the house of Kehar Singh which has been recovered from the latter. It clearly goes to show that Kehar Singh knew why Beant Singh took Amrit and why he handed over the golden 'kara' and ring to him. It is also

clear from the evidence of Bimla Khalsa that what transpired between Beant Singh and Kehar Singh on 14th was not conveyed to her and she was kept in dark.

83. In this background, the trip to Amritsar of Beant Singh, Kehar Singh and their families is of some significance. On October 20, 1984 Beant Singh and Kehar Singh along with their family members went to Amritsar. There is evidence indicated by Bimla Khalsa that originally Kehar Singh and Beant Singh wanted to go alone but ultimately they agreed that the families also could accompany. According to the evidence of Bimla Khalsa they reached at Amritsar at about 2 to 3 P.M. and went to Darbar Sahib Gurudwara in the evening of 20th October. While ladies and children were listening to kirtan, Beant Singh and Kehar Singh went to accompany them to see the Akal Takht but she was told to see the same on the next morning. On the next morning *i.e.* on 21st October, PW 53 was woken up by Kehar Singh and told that he would attend 'Asa Ki War Kirtan' in Darbar Sahib. He went along with Beant Singh. The ladies and children went to Darbar Sahib at 8 A.M. along with PW 53. They returned home at 11 A.M. Beant Singh and Kehar Singh did not return along with them. After lunch, PW 53 took the ladies and children to the railway station. Beant Singh and Kehar Singh directly came to the railway station from where they caught the train to New Delhi. The attempt of these two persons to keep themselves away from the company of their wives and children speaks volume about their sinister designs. The way in which these two avoided the company of the members of the family and PW 53 at whose residence they were staying and the manner in which they remained mysterious if looked at with the secret talks which they had in the house of Bimla Khalsa earlier goes to establish that the two were doing something or discussing something or planning something which they wanted to keep it as a secret even from Bimla Khalsa.

84. So far as 'Amrit Chhakna' ceremony is concerned or taking Amrit is concerned, ordinarily it may not be significant. It is only a ceremony wherein a Sikh takes a vow to lead the life of purity and giving up all worldly pleasure and evil habits but this unfortunately is a situation which could be understood in different ways. The manner in which Amrit has been taken by Beant Singh and even Satwant Singh has been made to take it and even Bimla Khalsa made to take it makes it significant that in all these three of Amrit taking Kehar Singh was always with them or at least it could be said, was inspiring them to have it. It also indicates that there was something in the mind of Beant Singh which was known to Kehar Singh and which he

even tried to keep a secret from Bimla Khalsa, wife of Beant Singh and wanted Beant Singh to have a full religious purification and confidence.

85. There is yet another circumstance Post-crime conduct of Kehar Singh. It is in the evidence that on the day *i.e.* 31st October, 1984 although Kehar Singh claims to be on leave, he goes to the office at 10.45 A.M. and at that time when the news reached in the Office about the assassination PW 59 inquired from Kehar Singh as to what had happened? Kehar Singh replied in these words:

“Whosoever would take confrontation with the Panth, he would meet the same fate.”

This remark shows his guilty mind with that of Beant Singh.

86. We have discussed some of the main features of the case and it is not necessary for us to go into other details which the High Court had discussed. These circumstances by themselves indicate that Kehar Singh was a co-conspirator to assassinate Mrs. Gandhi.

Satwant Singh:

87. He was a Constable on security duty at the residence of the Prime Minister.

88. He was charged under Sec. 302 read with Sec. 120-B and Sec. 34 for murdering the Prime Minister Smt. Indira Gandhi, secondly under Sec. 307 for attempting to murder one Rameshwar Dayal, PW 10 and under Sec. 27 of the Arms Act. To prove these charges, prosecution has examined Narain Singh, PW 9, Rameshwar Dayal PW 10 and Nathu Ram PW 64 besides Sukhvir Singh PW 3 and Raj Singh PW 15. PW 27 has deposed about the history as to how this person was recruited in the Police in 1982 and how he happened to come to be posted at Teen Murti Lines and thereafter in the security duty with the Prime Minister. PW 14 Duty Officer at the Teen Murti Lines has deposed that DAP personnel was placed on duty at various duty points at the PM's house on weekly basis from Friday to Friday by Head Constable Dayal Singh the Company Havaladar. The daily duty maintained at Teen Murti Ex. PW 4-C shows that Entry No. 85 that on the morning of 31-10-84 Satwant Singh was put on duty at Gate No. 4 in the Akbar Road House and not the TMC Gate and this entry is confirmed by Ex. PW 15 Daily diary Clerk at that time. The arms and ammunition register Ex. PW 3A at Teen Murti Lines also shows that Satwat Singh was issued an SAF Carbine having Bull No. 80 along with five magazines and hundred live rounds of .99 of

ammunition. He signed the register in token of the receipt. PW 3, the Armoury Incharge confirms this. There is also evidence to indicate that this person manipulated his duty and was put on the TMC gate where ultimately the incident took place on the morning of 31-10-84.

89. The main evidence against him is evidence of eye witnesses. The first eye witness which I would like to refer is Narain Singh PW 9. This witness stated that he was on duty at about 7.30 A.M. in the porch of the Prime Minister's house. According to him at 8.45 A.M. he with an umbrella took up his position near the entry gate as he came to know that Smt. Gandhi had to go to No.1, Akabr Road to meet certain foreign TV representatives and he was to go along with her holding an umbrella to protect her from the sun. At 9.10 A.M. Smt. Gandhi came out of the house followed by Nathu Ram PW 6 and her Private Secretary shri R.K. Dhawan. Then he moved over to the right side and held the umbrella Ex. PW 19. They approached the TMC Gate and when they were about 10 ft. therefrom he saw that the gate was open and he also saw Beant Singh on the left side and Satwant Singh on the right side, the former in a Safari suit and the latter in the uniform and with a Carbine stengun in his hands. At that time Beant Singh took out his revolver from the right dub and fired at Smt. Gandhi and immediately thereafter Satwant Singh also started firing at her. Smt. Gandhi was hit by these bullets and injured. She fell down on the right side. Seeing this he threw the umbrella on the left side, took out his revolver and jumped on Beant Singh. As a result of which revolver fell from the hands. He saw Satwant Singh throwing his Carbine to the ground on his right side. At that time Shri Bhatt, the personal guard of Smt. Gandhi and ITBP personnel arrived there and secured Satwant Singh. Some other persons also came and secured Beant Singh. He then ran to summon the doctor and while going, he noticed that Rameshwar Dayal PW 10 had also sustained bullet injuries. The doctor himself came running by then. He, Bhatt, the doctor and Nathu Ram took her to the escort car which had arrived near and placed her in the rear seat. By this time, Smt. Sonia Gandhi had also arrived and Smt. Gandhi was taken to AIIMS accompanied by Bhatt, Dhawan and Fotedar on the front seat and the doctor and Sonia Gandhi on the back seat. He went to the Hospital in a staff car and PW 10 was taken to AIIMS in another car. There she was taken to the eighth floor and he was given the duty of controlling the crowd. At about 10 or 10.15 A.M. R.P. Kochhar, PW 73 arrived and this witness gave a statement to Kochhar in the doctors' room which was recorded by him and sent to Tughlak Road Police Station which is the FIR in this case.

90. His testimony is corroborated by the First Information Report and also by the two other eye-witnesses Rameshwar Dayal and Nathu Ram whose presence on the spot could not be doubted. Nathu Ram was in the personal staff of the Prime Minister and Rameshwar Dayal himself had received injuries. Apart from it, this evidence of direct witnesses also finds corroboration from the post-mortem report, recovery of cartridges and arms on the spot and the evidence of the Doctor and the expert who tallied the bullets. Under these circumstances even if the confession of this appellant Satwant Singh is not taken into consideration, still there is enough evidence which conclusively establishes his part in the offence and in this view of the matter there appears to be no reason to interfere with the conclusions arrived at by the two courts below. In our opinion, therefore, the appeal of Satwant Singh deserves to be dismissed.

91. Then is the question of sentence which was argued to some extent. But it must be clearly understood that it is not a case where X is killed by Y on some personal ground or personal vendetta. The person killed is a lady and no less than the Prime Minister of this Country who was the elected leader of the people. In our country we have adopted and accepted a system wherein change of the leader is permissible by ballot and not by bullet. The act of the accused not only takes away the life of popular leader but also undermines our system which has been working so well for the last forty years. There is yet another serious consideration. Beant Singh and Satwant Singh are persons who were posted on the security duty of the Prime Minister. They are posted there to protect her from any intruder or from any attack from outside and therefore if they themselves resort to this kind of offence, there appears to be no reason or no mitigating circumstance for consideration on the question of sentence. Additionally, an unarmed lady was attacked by these two persons with a series of bullets and it has been found that a number of bullets entered her body. The manner in which mercilessly she was attacked by these two persons on whom the confidence was reposed to give her protection repels any consideration of reduction of sentence. In this view of the matter, even the conspirator who inspired the persons who actually acted does not deserve any leniency in the matter of sentence. In our opinion, the sentence awarded by the trial court and maintained by the High Court appears to be just and proper.

92. In the light of the discussions above Criminal Appeal No. 180/87-filed by accused Kehar Singh and Criminal Appeal No.182/87 filed by accused Satwant Singh are dismissed. Conviction and sentence passed against them are maintained whereas Criminal Appeal

No. 181/87 filed by Balbir Singh is allowed. Conviction and sentence passed against him are set aside. He is in custody. He be set at liberty forthwith, if not wanted in connection with any other case.

Ray, J. (Agreeing with Oza & Shetty, JJ.) : 93. I have perused the judgments prepared by my learned brothers Hon'ble Oza, J. and Hon'ble Shetty, J. I fully concur with the views expressed in these judgments. However since the matter is important I like to deal with two aspects of the case *i.e.* whether trial in Tihar Jail is vitiated as it infringes the right and secondly, whether the confession of accused Satwant Singh being not made in the manner prescribed under Section 164 of the Code of Criminal Procedure is admissible in evidence and whether the same can be relied upon.

94. A Gazette Notification dated 10-5-1985 was issued under Section 9(6) of the Code of Criminal Procedure mentioning that the High Court of Delhi have directed that the trial of this assassination case shall be held in the Central Jail Tihar. Another Notification of the same date was issued whereby the High Court was pleased to order that this case will be tried by Shri Mahesh Chandra, Addl. Sessions Judge, New Delhi. This order was made under Section 194 of the Code of Criminal Procedure, 1973. It was contended on behalf of the appellant that Section 9(6) empowers the High Court to specify the place where the Sessions Court shall hold its sittings ordinarily. It does not empower the High Court to direct the holding of a court in a place other than the usual place of sitting in court for trial of a particular case. It is only in a particular case if the Court of Session is of opinion that it will be for the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions Division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case. The High Court has not been given any such power to order holding of court at any other place than the court where generally the sittings of the Court of Session are held or, where usually the Court of Session sit. It was therefore, urged that the impugned order is wholly bad and arbitrary. It has also been urged in this connection that speedy trial and trial in an open court is fundamental right guaranteed by Article 21 of the Constitution of India. The holding of trial in Tihar Jail as directed by the High Court is a clear breach of this fundamental right and as such the entire trial is vitiated. It has also been urged in this connection that an application was filed on behalf of the accused. Kehar Singh before the Court on 17-5-1985 objecting to the holding of trial in jail. This application, of course, was rejected by order dated 5-6-1985 by the Magistrate by holding that the trial in Tihar Jail was an open

trial and there was no restriction for the public so minded to go to the place of trial to witness the same. As regards the first objection the fixing of the place of sitting of Court of Session was made prior to the enforcement of the Code of Criminal Procedure 1973 by the executives. Under the amended Criminal Procedure Code, 1973, Section 9(6) has conferred power on the High Court to notify the place where the Court of Session will ordinarily hold its sittings within the Sessions Division in conformity with the policy of separation of judiciary from the executive. It is also to be noticed that the High Court may notify the place or places for the sitting of the Court of Session. Thus, the High Court can fix a place other than the Court where the sittings are ordinarily held if the High Court so notifies for the ends of justice. Moreover, the use of the word "ordinarily" by itself signifies that the High Court in exercise of its powers under Section 9(6) of the said Act may order the holding of court in a place other than the court where sittings are ordinarily held if the High Court thinks it expedient to do so and for other valid reasons such as security of the accused as well as of the witnesses and also of the Court. The order of High Court notifying the trial of a particular case in a place other than the Court is not a judicial order but an administrative order. In this case because of the surcharged atmosphere and for reasons of security, the High Court ordered that the trial be held in Tihar Jail. Therefore, it cannot be said that the trial is not an open trial because of its having been held in Tihar Jail as there is nothing to show that the public or the friends and relations of the accused were prevented from having access to the place of trial provided the space of the court could accommodate them. It is also to be noted in this connection that various representatives of the press including representatives of international news agency like BBC etc. were allowed to attend the proceedings in court subject to the usual regulations of the jail. It is pertinent to mention that Section 327 of the Code of Criminal Procedure provides that any place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court, to which the public generally may have access, so far as the same can conveniently contain them. The place of trial in Tihar Jail according to this provision is to be deemed to be an open court as the access of the public to it was not prohibited. Moreover, it has been submitted on behalf of the prosecution that there is nothing to show that the friends and relations of the accused or any other member of the public was prevented from having access to the place where trial was held. On the other hand, it has been stated that permission was granted to the friends and relations of the accused

as well as to outsiders who wanted to have access to the court to see the proceedings subject, of course, to jail regulations. Section 2(p) Criminal Procedure Code defines place as including a house, building, tent, vehicle, a vessel other than in court. Furthermore, the proviso to Section 327 Criminal Procedure Code provides that the Presiding Judge or Magistrate may also at any stage of trial by order restrict access of the public in general or any particular person in particular in the room or building where the trial is held. In some cases trial of criminal case is held in court and some restrictions are imposed for security reason regarding entry into the court: Such restrictions do not detract from trial in open court. Section 327 proviso empowers the Presiding Judge or Magistrate to make order denying entry of public in court. No. such order had been made in this case denying access of members of public to court.

95. Trial in jail does not by itself create any prejudice to the accused and it will not be illegal. In *re T.R. Ganeshan*, AIR 1950 Mad 696 at p. 699, it has been held that :

“Section 352 empowers the Magistrate to hold his court in any place, provided it is done publicly and the Court premises is made accessible to the public, there can be no objection to the holding of the trial within the jail compound in the recreation room which is strictly outside the jail premises proper.

Where the public have access to the court-room and the trial is conducted in open view, the holding of the trial within the jail compound will not cause prejudice to the accused and will not be illegal, merely because it relates to an offence committed within the jail premises, where the trying Magistrate is in no way connected with the jail department.”

96. In the case of *Sahai Singh v. Emperor*, AIR 1917 Lahore 311 the trial of the criminal case was held in jail. It was contended that the whole trial was vitiated. It has been held that:

“There is nothing to show that admittance was refused to any one who desired it, or that the prisoners were unable to communicate with their friends Counsel. No doubt, it is difficult to get Counsel to appear in jail and for that reason, if for no other, such trials are undesirable, but in this case the Executive Authorities were of the opinion that it would be unsafe to hold the trial elsewhere.”

The trial was therefore, held to be not vitiated.

97. In *Prasanta Kumar Mukherjee v. The State*, AIR 1952 Cal 91 at p. 92 the petitioner was tried along with several others on a charge under Section 143, I.P.C. and the trial took place inside the Hooghly Jail. In accordance with the order made by the Magistrate who was posted at Serampore. It was contended by the learned Counsel on behalf of the accused that the jail inside the Hooghly Jail was improper and prejudiced the accused in his defence. It was observed that :

“The ordinary rule is that the trials are to be held in open Court. While there is nothing in law to prevent a Magistrate by S. 352, Criminal P.C., the very nature of a jail building and the restrictions which are necessarily imposed on any one visiting jail, would make it ordinarily impossible for a Magistrate to hold open Court in Jail. There may be circumstances in which for reasons of security for the accused or for the witnesses or for the Magistrate himself or for other valid reason the Magistrate may think it proper to hold Court inside Jail building or some other building and restrict the free access of the public. There is, however nothing in the record of this case to show that there was any such reason which made the Magistrate decide in favour of holding the trial in a Jail.”

98. Similar observation has been made in the case of *Kailash Nath Agarwal v. Emperor*, AIR 1947 All 436.

99. This decision has been relied upon in the case of *Narwarsingh v. State*, AIR 1952 Madh Bha 193.

100. In the case of *Richmond Newspapers, Inc. v. Common Wealth of Virginia*, United States Supreme Court Reports (1980) 65 Law Ed. 2d 973 before the commencement of fourth trial on murder charges, counsel for the defendant moved that the trial be closed to the public. The prosecutor stated that he had no objection, and the trial court – apparently relying on a Virginia statute providing that in the trial of all criminal cases, “the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated” – ordered that the courtroom be kept clear of all parties except the witnesses when they testified. Later that day a newspaper and its two reporters, who had been present at the time the order was issued but who made no objection, sought a hearing on a motion to vacate the closure order. After a closed hearing on the motion at which counsel for the newspaper argued that constitutional considerations mandated that before ordering

closure, the court should first decide that the right of the defendant could be protected in on other way, the court denied the motion to vacate and ordered the trial to continue with the press and public excluded, expressing his inclination to go along with the defendant's motion so long as it did not completely override all rights of everyone else. Subsequently the Judge granted a defence motion to strike the prosecution's evidence and found the defendant not guilty of murder, and the court granted the newspaper's motion to intervene *nunc pro tunc* in the case. The newspaper then petitioned the Virginia Supreme Court for writs of mandamus and prohibition and filed an appeal from the trial court's closure order, but the Virginia Supreme Court dismissed the mandamus and prohibition petitions and, finding no reversible error, denied the petition for appeal. On *certiorari*, the United States Supreme Court reversed the order. Virginia Chief Justice who delivered the majority judgment of the Court expressed the view that there is a guaranteed right of the public under the First and Fourteenth Amendments to attend criminal trials and that absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public, and emphasized that in the case at bar the trial judge made no findings to support closure, no inquiry was made as to whether alternative solutions would have met the need to insure fairness, and there was no recognition of any right under the Constitution for the public or press to attend the trial.

101. It has already been stated hereinbefore that in the instant case though the trial was held in Tihar Jail for reasons of security of the accused as well as of the witnesses and of the court and also because of the surcharged atmosphere, there was no restriction on the public to attend the Court, if they so minded. Therefore, this trial in the instant case in Tihar Jail is an open trial and it does not prejudice in any manner whatsoever the accused.

102. It has been urged referring to the case *Scott v. Scott* 1911-13 All ER Rep. 1 that the broad principle is that the administration of justice should take place in open court except in three cases such as suits affecting wards, lunacy proceedings and thirdly cases where secrecy, as for instance, the secrecy of a process of manufacture or discovery or invention – trade secrets is of the essence of the cause. Therefore, it recognises that in cases what the ends of justice would be defeated if the case is not heard in camera the court may pass order for hearing the case in camera.

103. In the case of *Cora Lillian McPherson v. Oron Leo McPherson*, AIR 1936 PC 246 a divorce suit was heard in the Judge's Library. Public access to the court-rooms was provided from a public

corridor. There was no direct access to the library, which was approached through a double wing door in the wall of the same corridor. One wing of the door was always fixed. A brass plate with the word "private" on it was attached to it. Both the counsel and the Judge were not in robes, and when the Judge took his seat he announced that he was sitting in open Court, and that the library, as the place of trial there was no intention of shutting out anybody though a regular court-room was available. It was held that :

"Every Court of justice is open to every subject of the King. Publicity is the authentic hall-mark of judicial as distinct from administrative procedure and a divorce suit is not within any exception. The actual presence of the public is never of course necessary. The Court must be open to any who may present themselves for administration."

104. These observations were made following the judgment in the case of *Scott v. Scott* (*supra*).

105. All these cases have been considered by this Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*, (1966) 3 SCR 744 : (AIR 1967 SC 1) wherein it has been observed that (at pp. 8 and 9 of AIR) :

"...While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the trial is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise whereby following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course."

"...In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice."

106. Though public trial or trial in open court is the rule yet in cases where the ends of justice would be defeated if the trial is held in public, it is in that case the Court has got inherent jurisdiction to hold trial in camera. Therefore, the holding of trial in jail cannot be said to be illegal and bad and entire trial cannot be questioned as vitiated if the High Court thinks it expedient to hold the trial in jail. The submission of the learned counsel on behalf of the appellant on this issue is not sustainable.

107. This Court while considering the plea made on behalf of the detenu that the proceedings of the Advisory Board should be thrown open to the public in the case of *A.K. Roy v. Union of India*, (1982) 2 SCR 272 at p. 354 : (AIR 1982 SC 710 at p. 752) held that :

"The right to a public trial is not one of the guaranteed rights under our Constitution as it is under the 6th Amendment of the American Constitution which secures to persons charged with crimes a public, as well as a speedy, trial. Even under the American Constitution, the right guaranteed by the 6th Amendment is held to be personal to the accused, which the public in general cannot share. Considering the nature of the inquiry which the Advisory Board has to undertake, we do not think that the interest of justice will be served better by giving access to the public to the proceedings of the Advisory Board."

108. I do not think it expedient to consider this aspect of the matter at this juncture in view of the explicit provision made in S. 327 of Code of Criminal Procedure, 1973 corresponding to S. 352 of the old Criminal Procedure Code which enjoins that the place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open court.

109. The confession of accused No.1, Satwant Singh which was recorded in Tihar Jail by the Link Magistrate, Shri Eharat Bhushan has been vehemently criticised by the learned counsel Mr. Ram

Jethmalani on the ground that the confession being not recorded in open court as required under the provisions of S. 164 of Criminal Procedure Code, is inadmissible in evidence and it cannot be adhered to for convicting the accused. This submission does not hold good in view of the pronouncement of this Court in *Hem Raj Devilal v. State of Ajmer*, AIR 1954 SC 462 wherein it has been held that :

“No doubt the confession was recorded in jail though ordinarily it should have been recorded in the Court House, but that irregularity seems to have been made because nobody seems to have realised that that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession.”

110. In *Ram Chandra v. State of U.P.*, AIR 1957 SC 381 the appellant was sent to Naini Jail on 13th July. He was brought before a Magistrate on 17th July but he refused to make any confession. On 7th Oct. a letter signed by the appellant was sent to the District Magistrate, Allahabad, through the Superintendent of the Jail to the effect that he wanted to make a confession. At about this time he was kept in solitary confinement and that the police officer who was investigating this case went to the Naini Jail on 8th and 9th Oct. The District Magistrate deputed Smt. Madhuri Shrivastava to record the confession. She went to Jail on 10th October and recorded the confession in jail. Before recording the confession the Magistrate did not attempt to ascertain why he was making the confession after such a long lapse of time. She in her cross-examination said that she thought it improper to record his statement in court and during court hours. She was not aware of the rules framed by the Government that confession is to be recorded ordinarily in open court and during court hours unless for exceptional reasons it is not feasible to do so. She also did not apprise the accused that he is not bound to make any statement and such statement if made may be used against him. She gave the usual certificate that the accused made the statement voluntarily. In these circumstances it was held that the confession was not recorded in accordance with law and the accused was not explained that he was not bound to make any statement and if any statement is made, the same will be used against him. It was therefore, held that the confession was not a voluntary one and the same cannot be used in convicting the accused.

111. Thus the reason for not taking into consideration the confession was that the mandatory requirement of explaining to the accused as provided in S. 164 (3) of Criminal Procedure Code was not observed

before the recording of confession and as such the confession was not a voluntary one. The recording of confession in jail by itself was not held to invalidate the confession by this Court. It has been urged by Mr. Jethmalani that a confession not recorded in the manner prescribed in S. 164, Cr.P.C. and if a certificate as required to be appended below the confession is not made in accordance with the prescribed terms, is inadmissible in evidence. In support of this submission reference was made to *Nazir Ahmad v. King Emperor*, AIR 1936 PC 253 (2). In this case the Judicial Committee observed that the principle applied in *Taylor v. Taylor* (1875) 1 Ch D 426 to a court, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a record under S. 164 and, therefore, held that the Magistrate could not give oral evidence of the confession made to him which he had purported to record under S. 164 of the Code. Otherwise all the precautions and safeguards laid down in Ss. 164 and 364, both of which had to be read together, would become of such trifling value as to be almost idle.

112. It has been urged on behalf of the respondent that if the confession is not recorded in proper form as prescribed by S. 164 read with S. 281 which corresponds to earlier S. 364, it is a mere irregularity and it can be cured by S. 463 on taking evidence that the statement was recorded duly and it has not injured the accused in defence on merits. This question came up for consideration in this court in the case of *State of U.P. v. Singhara Singh*, AIR 1964 SC 358. It has been observed that (at p. 362 of AIR) :

“What S. 533 therefore, does is to permit oral evidence to be given to prove that the procedure laid down in S. 164 has in fact been followed when the court finds that the record produced before it does not show that that was so. If the oral evidence establishes that the procedure had been followed, then only can the record be admitted. Therefore, far from showing that the procedure laid down in S. 164 is not intended to be obligatory, S. 533 really emphasises that that procedure has to be followed. The section only permits oral evidence to prove that the procedure had actually been followed in certain cases where the record which ought to show that does not on the face of it do so.”

113. In *Ranbir Singh v. Emperor*, (1932) 33 Cri LJ 242 : (AIR 1932 Lahore 204) the accused was taken into the thana compound and the Magistrate who is a retired District Judge recorded his

statement in the open at 9 p.m. The Magistrate did not tell him that he was a Magistrate and he did not satisfy himself by questioning him whether he was making the confession voluntarily, although he states quite definitely that he was satisfied by observation that the man was making a voluntary statement. It was observed that the failure of the Magistrate to question the accused as to his making the confession voluntary is a radical and fatal defect, which cannot be cured by S. 533 of the Criminal Procedure Code. The confession was held inadmissible.

114. In the case of *Partap Singh v. The Crown*, (1925) ILR 6 Lahore 415 : [AIR 1925 Lahore 605 (2)] it does not appear from the confession that the provisions of S. 164 (3) i.e. to explain to the person who is to make it that he is not bound to make a confession at all and that if he does so, it may be used as evidence against him, were not applied by the Magistrate. Question arose whether such a defect in the confession can be cured by S. 533 Criminal Procedure Code. It was held that a defect in form is curable and a defect in substance is not. It was further held that "if as a matter of fact the statement was duly recorded, that is to say, after the required explanation had been given, but the Magistrate had failed to embody that fact in the certificate such a defect would be curable. If the explanation had not in fact been made the statement could not be held to have been 'duly made' and S. 533 could not be appealed to."

115. In *Prag v. Emperor*, (1931) 32 Cri LJ 97 : (AIR 1930 Oudh 449) it has been held that in recording a confession it is the duty of the Magistrate to satisfy himself in every reasonable way that the confession is made voluntarily and further it is the imperative duty of the Magistrate to record those questions and answers by means of which he has satisfied himself that the confession is in fact voluntary. Omission to warn the accused that he was making a confession before a Magistrate and to record the steps taken by the Magistrate to see that the confession was made voluntarily is a substantial defect not curable by S. 533 Criminal Procedure Code.

116. The High Court of Orissa in the case of *Ambai Majhi v. The State*, 1966 Cri LJ 851 has held that S. 533 can cure errors of forms and not of substance.

117. On a consideration of the above decisions it is manifest that if the provisions of S. 164(2) which require that the Magistrate before recording confession shall explain to the person making confession that he is not bound to make a confession and if he does so it may be used as evidence against him and upon questioning the person if the Magistrate has reasons to believe that it is being made

voluntarily then the confession will be recorded by the Magistrate. The compliance of the sub-sec. (2) of S. 164 is therefore, mandatory and imperative and non-compliance of it renders the confession inadmissible in evidence. Section 463 (old Section 533) of the Code of Criminal Procedure provides that where the questions and answers regarding the confession have not been recorded evidence can be adduced to prove that in fact the requirements of sub-sec. (2) of S. 164 read with S. 281 have been complied with. If the Court comes to a finding, that such a compliance had in fact been made the mere omission to record the same in the proper form will not render it inadmissible evidence and the defect is cured under S. 463 (S. 533 of the old Criminal Procedure Code) but when there is non-compliance of the mandatory requirement of S. 164(2) Criminal Procedure Code and it comes out in evidence that no such explanation as envisaged in the aforesaid sub-section has been given to the accused by the Magistrate, this substantial defect cannot be cured under S. 463 Criminal Procedure Code.

118. In *Abdul Rajak Murtaja Dafedar v. State of Maharashtra*, (1970) 1 SCR 551 : (AIR 1970 SC 283), it was observed that the appellant himself never said that he made the confession on account of any inducement or coercion on the part of the police. The appellant was kept in jail custody for 3 days from October, 25 to Oct. 28, 1966 and on Oct. 28, 1966 the Executive Magistrate made the preliminary questioning of the appellant, gave him a warning and sent him back to District Jail at Sangli. On the next day the appellant was produced before the Magistrate and the confession was recorded. The appellant had thus spent four days in judicial custody and he was not under the influence of the investigating agency for at least four days. Again he had 24 hours to think after he was told by the Magistrate that he was not bound to make any confession and if he made one it would be used against him. It was held that the confession could not be said to be not voluntary.

119. In *Dagdu v. State of Maharashtra*, AIR 1977 SC 1579 : (1977 Cri LJ 1206) eight confessions were recorded by Sub-Divisional Magistrate, Devidas Sakharam Pawar (PW 23) without complying with the mandatory provisions of S. 164 of the Code of Criminal Procedure. He made no effort to ascertain from any of the accused whether he or she was making the confession voluntarily. Nor did he ask any of the accused whether the police had offered or promised any incentive for making the confessional statement. He also did not try to ascertain for how long the confessing accused were in jail custody prior to their production for recording the confession. There

was no record to show whether the accused were sent after they were given time for reflection. In none of these confessional statements there was a memorandum as required by S. 164 of the Code of Criminal Procedure that the Magistrate believed "that the confession was voluntarily made." It was observed by this court that (Para 50):

"The failure to observe the safeguards prescribed therein are in practice calculated to impair the evidentiary value of the confessional statements."

It was further observed that (Para 51)" –

"Considering the circumstances leading to the processional recording of the eight confessions and the abject disregard, by the Magistrate, of the provisions contained in S. 164 of the Code and of the instructions issued by the High Court, we are of the opinion that no reliance can be placed on any of the confessions."

120. In *Ram Prakash v. State of Punjab*, 1959 SCR 1219: (AIR 1959 SC1), it was held that :

"A voluntary and true confession made by an accused though it was subsequently retracted by him, can be taken into consideration against a co-accused by virtue of S. 30 of the Indian Evidence Act, but as a matter of prudence and practice the Court should not act upon it to sustain a conviction of the co-accused without full and strong corroboration in material particulars both as to the crime and as to his connection with that crime."

121. In the instant case the accused Satwant Singh who was in police custody was produced before the Magistrate Shri S.L. Khanna on 29-11-84. On that day the accused made an application (Ext. PW.11/A) stating that he wanted to make a statement about the facts concerning Indira Gandhi assassination case. The Magistrate directed the remand of the accused in judicial custody till 1-12-1984 giving the accused time to reconsider and reflect. The Magistrate also told him that he was not bound to make any statement and if any statement is made the same might be used against him. The Magistrate also directed to send a letter to the Secretary, Legal Aid Committee to provide legal assistance to the accused at the expense of the State. On 1-12-1984, the Magistrate enquired of the accused whether he wanted to make a statement whereon the accused stated

that he wanted to make a statement. He was allowed to consult his counsel, Shri I.U. Khan, Advocate who conferred with him for about 15 minutes privately. As the accused insisted that his statement be recorded, the application was sent by the Magistrate, Shri Bharat Bhushan for recording his statement. Before recording his statement Dr. Vijay Kumar was called to examine the accused. Dr. Vijay Kumar stated in his report (Ext.PW/11B) that in his opinion the accused is fit to make his statement. It appears from Ext. PW 11/B-2 as well as from the question and answers which were put to the accused (Ext. PW 11/B-3) that the Link Magistrate, Shri Bharat Bhushan warned the accused that he was not bound to make any confessional statement and in case he does so it may be used against him during trial. The accused in spite of this warning wanted to make a statement and thereafter the confessional statement Ext. PW 11/C was recorded by the Link Magistrate. In the certificate appended to the said confessional statement it has been stated that there was no pressure upon the accused and there was neither any police officer nor anybody else within the hearing or sight when the statement was recorded. Therefore, it appears that the accused was put the necessary questions and was given the warning that he was not bound to make any statement and in case any statement is made, the same might be used against him by the prosecution for his confession. Of course, no question was put by the Magistrate to the accused as to why he wanted to make a confessional statement. It also appears from the evidence of the Magistrate, Shri Bharat Bhushan (Ext. PW 11) that the confessional statement was made voluntarily by the accused. So the defect in recording the statement in the form prescribed is cured by S. 463 of the Code of Criminal Procedure. It is indeed appropriate to mention in this connection that the defect in recording the statement in appropriate form prescribed can be cured under S. 463 of the Code of Criminal Procedure provided the mandatory provisions of S. 164 (2) namely explaining to the accused that he was not bound to make a statement and if a statement is made the same might be used against him, have been complied with and the same is established on an examination of the Magistrate that the mandatory provisions have been complied with.

122-123. The accused No. 1, Satwant Singh has been charged with the murder of Smt. Indira Gandhi, Prime Minister of India under S. 302 I.P.C. read with Ss. 120-B and 34, I.P.C. He has also been charged under S. 307, I.P.C. for attempt to murder Rameshwar Dayal. He has further been charged under S. 27 of the Arms Act.

124. The prosecution has examined three eye witnesses namely

PW-9 Narain Singh, PW-10 Rameshwar Dayal and PW-64 Nathu Ram. Prosecution has also examined PW-49 Ganga Singh, Member of ITBP who immediately after the firing apprehended Satwant Singh.

125. PW-9 Narain Singh, deposed that he was on duty at 1, Safdarjang Road from 7.30 a.m. on 31-10-1984 and the place of duty was isolation cordon near the porch. He stated that at 8.45 A.M. he took hold of the umbrella and took his position near the pantry gate as he came to know that the Prime Minister, Smt. Indira Gandhi had to meet the foreign T.V. representatives in No. 1, Akabr Road. At 9.10 A.M. Prime Minister emerged out of her house No.1, Safdarjang Road followed by Nathu Ram (PW-64) and her Private Secretary, R.K. Dhawan. At that time the deponent was holding the umbrella over the head of Prime Minister to save her from sun and was moving on her right side. They approached the TMC gate and when they were about 10 feet from there, he saw that the gate was open. He also saw Beant Singh on the left side and Satwant Singh on the right side. The former was in a safari suit and the latter i.e. Satwant Singh was in his uniform. Satwant Singh had a stengun in his hands. At that time, Beant Singh took out his revolver from the right dub and fired at the Prime Minister and immediately thereafter Satwant Singh also started firing upon the Prime Minister. The Prime Minister was hit by those bullets and injured and fell down on the right side. Seeing them firing on the Prime Minister, he threw the umbrella and took out his revolver and jumped upon Beant Singh whereupon his (Beant Singh) revolver fell from his hands. He secured Beant Singh. He further stated that he noticed Rameshwar Dayal, ASI sustained bullet injuries. The doctor himself came running by then and at his direction he, Mr. Bhatt, ACP, Dr. Opey and Nathu Ram took her to the escort car which had arrived and placed her in the rear seat. He further said that he went to the hospital in staff car. ASI, Rameshwar Dayal was taken in another escort car to AIIMS. In his cross-examination he further stated that except for the accused Satwant Singh he did not find any constable of D.A.P. on duty on 31-10-1984 in the P.M. house on the portion through which he passed. He also stated that it was incorrect to suggest that Satwant Singh had sustained bullet injuries before Mrs. Indira Gandhi had been fired at. He also denied the suggestion that he was not present on the spot or that bullet injuries before Mrs. Indira Gandhi had been fired at. He also denied the suggestion that he was not present on the spot or that bullets were coming from all the four sides rather the bullets were coming from the front side of Mrs. Indira Gandhi. He also stated that he was stunned when he saw the bullets coming from Beant

Singh and Satwant Singh. He also stated that as Mrs. Indira Gandhi approached towards TMC gate within its ten feet, Beant Singh took out his revolver and immediately shot at Mrs. Indira Gandhi.

126. PW-10 ASI Rameshwar Dayal deposed to the following effect :

I was on duty on 31-10-1984 at P.M. house at No. 1, Safdarjang Road from 7.30 A.M. to 1.30 P.M. It was a security duty. I was on duty of water attendant in the Pilot's car of the Prime Minister. I enquired about the P.M. Programme. I learnt that the Prime Minister was to attend a film shooting VCR in No. 1, Akbar Road at 9 A.M. As I was going from No.1, Safdarjang Road to No. 1, Akbar Road and had reached the concrete road from the nursery I saw Prime Minister, Mrs. Indira Gandhi coming from No. 1, Safdarjang Road to No.1, Akabar Road. At that time, Shri R.K. Dhawan, B.C. Narain Singh with an umbrella on the right side a little behind her and Nathu Ram following R.K. Dhawan were also seen by me going towards No. 1, Akbar Road from No. 1, Safdarjang Road. I also started moving behind them. As the Prime Minister reached near the Sentry booth link gate i.e. the TMC gate or Akbar Road front gate, I saw Beant Singh SI and Satwant Singh constable with a sten-gun on duty. Satwant Singh, constable was in uniform. All of a sudden Beant Singh fired at the Prime Minister with his revolver by raising his right hand and immediately thereafter Satwant Singh also fired at the Prime Minister with his sten-gun. I saw the Prime Minister falling. I ran to shield the Prime Minister and I was also injured with the bullets. I fell down and I got up. By that time, Narain Singh H.C. had thrown his umbrella and had run to seize and secure Beant Singh and one Lawang Sherpa ran to secure them from Akbar Road side. They i.e. Beant Singh and Satwant Singh threw their arms. In the meanwhile, ITBP staff secured Beant Singh and Satwant Singh. At that time Beant Singh said, "whatever was to be done had been done."

127. In his cross-examination, he stated that the bullet had come from Satwant Singh side and it was that bullet which hit him. He also stated, "In fact, I could not have so stated since I had already told in my statement dated 2-11-84 that Satwant Singh and Beant Singh had fired at the Prime Minister, Smt. Indira Gandhi and injured her." He denied the suggestion that he was at a distance of 60-65 feet away from the Prime Minister when she was fired at and stated that he was at a distance of only 10/15 steps.

128. PW-64 Nathu Ram, Ex-Library Asstt. and Personnel

Attendant to Smt. Indira Gandhi stated in his deposition to the following effect :

On 31-10-84 I had come my duty at 7 A.M. to No. 1, Safdarjang Road as Library Asstt. and Personnel attendant of late P.M., Smt. Indira Gandhi. I was required to come in the morning, open the library-cum-bed room of the late Prime Minister and get it cleaned and dusted and then be in attendance upon the late P.M. to do what she wanted me to do. On 31-10-84 as well, after performing the above duties by about 9.05 A.M., the Prime Minister, Smt. Indira Gandhi was ready to go out with Mr. R.K. Dhawan. The Prime Minister thereupon left the room at 9.05 A.M. followed by Shri R.K. Dhawan and then followed by me. She reached the pantry gate where Shri Narain Singh was waiting with an umbrella in his hand. As the Prime Minister emerged out of the pantry gate, Shri Narain Singh opened the umbrella over her and held the said umbrella in his right hand while the Prime Minister was moving towards No. 1, Akbar Road. At that time when P.M. was moving towards No. 1, Akbar Road Narain Singh was with her on the right side holding the umbrella over her while on the left side Shri R.K. Dhawan was moving besides her talking to her. I was following Shri R.K. Dhawan at that time. I was about two steps behind Shri R.K. Dhawan. As all of us came out of the jafri gate, I noticed that the TMC gate was lying open and Beant Singh SI in safari suit was standing on our left side while Satwant Singh constable in uniform was standing on the right side of ours near the TMC gate. As we reached within about 10-11 feet of the TMC gate, Beant Singh took out his revolver and started firing on the Prime Minister. Immediately, thereafter Satwant Singh also started firing from his sten-gun upon the Prime Minister. Then the Prime Minister, Mrs. Indira Gandhi fell towards her right side. We were startled. At that very moment, Narain Singh threw umbrella and jumped upon Beant Singh and took out his (Narain Singh's) revolver, and secured Beant Singh. Simultaneously, Mr. Bhatt and Lawang Sherpa and other uniformed persons also arrived there and they secured Satwant Singh accused. Beant Singh and Satwant Singh threw their arms on the ground. When Narain Singh got up for bringing the doctor, Dr. Opey arrived on the spot. When myself, Shri Bhatt, Dr. Opey were in the process of removing the Prime Minister Smt. Indira Gandhi to the car along with Shri R.K. Dhawan and Narain Singh at that time I noticed that Rameshwar Dayal was also holding his leg in injured state on the spot.

129. In his cross-examination in answer to a question he stated "I saw two persons namely Beant Singh and Satwant Singh with arms. Shri Narain Singh also has arm with him and none else had

130. On a consideration and appraisal of the evidence of the eye-witnesses, it is clear and apparent that the accused Satwant Singh and Beant Singh fired at Smt. Indira Gandhi while she was approaching the TMC gate accompanied by her Private Secretary Shri R.K. Dhawan, Narain Singh, H.C., PW-9 holding an umbrella on her head to protect her from sun accompanying her on the right side and Nathu Ram following behind Shri R.K. Dhawan. It also appears that Beant Singh first started firing from his service revolver and simultaneously the accused No. 1, Satwant Singh also cocked his SAF Carbine towards the Prime Minister whereon the Prime Minister fell on the ground on her right side. It has been tried to suggest that the bullets were coming from all the sides and accused Satwant Singh was seriously injured by such bullets and Beant Singh died. This suggestion was however, denied by the eye-witnesses and they specifically stated that the accused Satwant Singh and Beant Singh shot on the Prime Minister while she was approaching the TMC gate and she was about 8-10 steps away from the TMC gate. It has been denied that there was any firing from all the sides and it has been specifically stated in cross-examination that the firing was from the front side which hit the Prime Minister and the said firing was caused by Beant Singh and Satwant Singh from their respective service revolver and SAF Carbine. It also appears that Beant Singh and accused Satwant Singh were apprehended by PW-9 Narain Singh HC and by the ITBP people. It has also been specifically stated by PW-9 in cross-examination that Satwant Singh did not sustain bullet injuries before Smt. Indira Gandhi had been fired at. The suggestion on behalf of the defence that there was firing from all sides and accused Satwant Singh was injured seriously and Beant Singh died by this firing has got no basis and it is unsustainable.

131. PW-49 Ganga Singh, L/Naik of ITBP stated in his deposition to the following effect :

On 31-10-84 I was posted on duty at No.1, Safdarjung Road from 6 A.M. to 2 P.M. near the main gate in guard room. At 9.15 A.M. I heard sound of firing of bullets from the TMC gate. I along with Shri Tersem Singh, Padam Singh, Jai Chand, Daya Nand thereupon took our carbines and went towards TMC gate running. We found Prime Minister Madam lying in injured condition on the floor. Near the gate there were two Sardars in white clothes again said one was in civil dress and the other was in uniform. The uniformed Sardar is present in the court *i.e.* Satwant Singh. He had a carbine in his hand. The other Sardar had a small weapon. Inspector Tersem Singh made them hands-up. I secured them. I and Padam Singh secured

the uniformed Sardar. The Sardar was secured by Jai Chand and Daya Nand. I took into possession a ruck-sack from the shoulder of the uniformed Sardar. Thereupon, Inspector Tersem Singh asked us to take the two Sardars to the guard room. The carbine and the small weapon were thrown on the ground. We then took both of them to the guard room. We left them there and Inspector Tersem Singh asked us to go to our point of duty. I heard some fire-shots from the guard room side and the accused No. 1 and Beant Singh were lying injured there.

132. In cross-examination he stated that "The revolver and sten-gun were in the hands of the Sardar before Shri Tersem Singh made them hands-up. It is incorrect to suggest that Satwant Singh had already been hit by a bullet when I reached the TMC gate. I secured Satwant Singh from the right side. Ruck-sack was on the left shoulder. It is obvious from the deposition of PW-49 that when he and other ITBP men took Beant Singh and Satwant Singh to the guard room they were not at all in injured condition. It has also been stated by this witness that the revolver and SAF carbine were in the hands of two Sardars before Shri Tersem Singh made them hands-up. This witness also denied the suggestion that Satwant Singh had already been hit by a bullet when he reached the TMC gate. The evidence of this witness therefore, contradicts and falsified the suggestion tried to be made on behalf of the defence, *i.e.* the accused Satwant Singh was injured already by bullets coming from all sides.

133. It is permitted to mention in this connection to the evidence of PW-27 ASI Mangat Ram who was posted as ASI personnel in 2nd Battalion D.A.P. He brought the record relating to Satwant Singh constable No. 1614 in 2nd Battalion DAP who was posted on 31-10-1984 in C&D at Teen Murti Line. He also deposed that on 27-6-83 *vide* order No. 2362-67/ASIP-22nd Battalion DAP he was posted in C Company of Teen Murti Line. Daily diary maintained at Teen Murti 2nd Battalion DAP (Ex. PW/14/C) shows from entry No. 85 dated 30/31-10-84 that on the morning on 31-10-1984, Satwant Singh constable No. 1614 was put on duty at Beat No. 4 in the Akabr Road House and not at the TMC gate and this entry is confirmed by PW-15, the daily diary clerk at Teen Murti Line. He deposed that entry No. 85 in Ex. PW/14/A is in his hand and is correct. He also stated that the accused Satwant Singh was put on duty at Beat No. 4, Akbar Road in the P.M. House and not at TMC gate and he was given arms as per koth register. The arms and ammunitions register (Ex. PW 3/A) at Teen Murti Line shows that Satwant Singh was issued a SAF Carbine (sten-gun) having Butt No. 80 along with 5

magazines and 100 live rounds of 9 mm ammunition and that he signed the register in token of its receipt. Therefore this goes to show the presence of the accused Satwant Singh at the TMC gate in the P.M. House at 1, Akbar Road on duty from 7.30 A.M. on 31-10-84 with a SAF Carbine Butt No. 80. There is therefore no iota of doubt that the accused No. 1, Satwant Singh was present at the TMC gate at No. 1, Akbar Road on the fateful morning *i.e.* on 31-10-84. It is to be noted in this connection that the duty of accused Satwant Singh constable was placed at beat No. 4, Akbar Road House on 31-10-84 as is evident from entry No. 85 in the Rojnamcha *i.e.* daily diary kept at Teen Murti Line but he in conspiracy with Beant Singh manipulated his duty at TMC gate on the plea that he was suffering from dysentery and having loose motions. This will be obvious from the deposition of PW-43 Constable Deshpal Singh No. 1157 who deposed that he was posted at TMC gate 1, Safdarjang Road, P.M. House w.e.f. 28th Oct. 1984 from 7 p.m. to 10 p.m. and also from 7 a.m. to 10 a.m. He further stated that he was on duty on 29th, 30th and 31st Oct. 1984 at these hours. On 31-10-84 he reported in the Line Teen Murthi and then took his arm and proceeded towards his duty in P.M. House. When he reached the P.M. House, the R.C. Kishan Lal No. 1189 told him that Satwant Singh who was on duty on Beat No. 4 was suffering from loose motions and therefore he should give duty at beat No. 4 while Satwant Singh would take his position duty at TMC gate, as there was latrine near TMC gate.

134. This clearly shows that Satwant Singh, accused No. 1 manipulated his duty from beat No. 4 to TMC gate in P.M. House and so there is no doubt about his presence at the TMC gate on 31-10-1984 from 7.30 a.m.

135. PW-12 G.R. Prasad, Principal Scientific Officer Incharge Ballistic Division C.F.S.L. New Delhi has deposed to the effect that the bullet (marked BC/7) recovered from injury No.1 described in the post-mortem report was fired from the 9 mm sten-gun (marked W/1). He further deposed that the bullet recovered from injury No. 2 was fired from the .38" special revolver (marked W/2). This affirms the prosecution case that the accused Satwant Singh and deceased Beant Singh fired shots at Smt. Indira Gandhi from their respective weapons. The deposition of these independent witnesses is corroborated by the confessional statement PW/11/C made by the accused Satwant Singh. Though the said confession was retracted subsequently by the accused, the same can be used by the Court against the accused in convicting him. In *Manohar Singh v. Emperor*, AIR 1946 All 15 it has been held that a confession made by an

accused cannot be used to convict his co-accused unless there is corroborative evidence against the co-accused but a person can be convicted solely upon his own confession even if retracted if the Court believes it to be true.

136. The law has been well settled in a decision of this Court in *Sarwan Singh Rattan Singh v. State of Punjab*, AIR 1957 SC 637 wherein it has been observed that (at p. 643):

“In law it is always open to the court to convict an accused on his confession itself though he has retracted it at a later stage. Nevertheless usually courts require some corroboration to the confessional statement before convicting an accused person on such statement. What amount of corroboration would be necessary in such a case would always be a question of fact to be determined in the light of the circumstances of each case.”

137. In the instant case the confessional statements were corroborated by independent evidences which clearly prove the guilt of the accused.

138. Therefore the charges against the accused Satwant Singh have been duly proved. The concurrent findings of the trial Court as well as of the High Court that offence under S. 302, I.P.C. read with S. 120-B, I.P.C. and S. 34, I.P.C. were proved, must be upheld. It is a gruesome murder committed by the accused who was employed as a security guard to protect the Prime Minister Indira Gandhi. It is one of the rarest of rare cases in which extreme penalty of death is called for.

139. The charge of conspiracy has been elaborately dealt with in the judgments rendered by my learned brothers. It appears therefrom that the charge of conspiracy against Kehar Singh with the accused Satwant Singh and Beant Singh since deceased who are the constable and S.I. respectively posted at the P.M.'s House to look after the security of Smt. Indira Gandhi has been proved without any reasonable doubt. Therefore, the appeal Nos. 180 and 182 of 1987 are dismissed and the conviction and sentence of death as confirmed by the High Court are upheld. The charge of conspiracy against accused No. 2, Balbir Singh has not been proved and as such the appeal filed by him *i.e.* Criminal Appeal No. 181 of 1987 is allowed and the judgment of the High Court is set aside. The appellant should be set free forthwith.

K. JAGANNATHA SHETTY, J. (agreeing with Oza J.) : 140. I agree respectfully with the conclusion reached by my learned brother, Mr. G.L. Oza, J., in these appeals. I wish, however, in view of the

importance of the questions involved, to give my own reasons, and to which I attach importance.

141. These appeals by special leave are directed against the conviction and sentence awarded against the appellants by the High Court of Delhi in Criminal Appeals Nos. 28 and 29 of 1986 and Murder Reference No. 2 of 1986.

142. The crime charged is not simply the murdering of a human being, but it is the crime of assassination of the duly elected Prime Minister of the Country. The motive for the crime was not personal, but the consequences of the action taken by the Government in the exercise of constitutional powers and duties. In our democratic republic, if the Government becomes subversive of the purpose of its creation, the people will have the right and duty to change it by their irresistible power of ballot and have the Government of their own choice wisely administered. But no person who is duly constituted shall be eliminated by privy to conspiracies. Indian citizens are committed to the Constitution. They have faith in the ballot box. They have confidence in the democratic institutions. They have respect for constitutional authorities. The assassination of Mrs. Indira Gandhi, the third Prime Minister of India, has, therefore, come as a rude shock. It has sent shudder through the civilised world. The issues joined in these appeals involve the highest interest of the whole people of this country. It is a matter of great importance to the people of this country that the accused be lawfully tried and lawfully convicted or acquitted. A wrongful conviction or a wrongful acquittal may shake the confidence of the people in our justice delivery system. The matter, therefore, requires utmost concern.

143. Trial of the assassin and conspirators for the murder of Mr. Indira Gandhi has resulted in the conviction. Satwant Singh (A-1), Balbir (A-2) and Kehar Singh (A-3) are convicted of murder under Section 302 read with Sections 120-B IPC. Satwant Singh is also convicted of murder under Section 302 read with Section 120-B and 34 IPC, as well as under Section 305 IPC and Section 27 of the Arms Act. The trial judge has awarded the sentence of death on all the three accused. The trial judge has also awarded other terms of imprisonment on Satwant Singh. The Delhi High Court has confirmed the conviction and sentence.

144. The prosecution version of the assassination may be briefly told:

That in June, 1984, the Indian Army mounted an operation known as "Blue Star Operation" by which the Armed Forces personnel entered the Golden Temple complex at Amritsar to flush out the

armed terrorists. That operation resulted in loss of life and property as well as damage to the Akal Takht at the Golden Temple. It has offended the religious feelings of some members of the Sikh community. Resentment was expressed even by some of the Sikh employees of the Delhi Police posted for Prime Minister's security. The accused persons are Sikhs by faith. They had been expressing their resentment openly, holding the Prime Minister responsible for the action taken at Amritsar. They became parties to a criminal conspiracy to murder Mrs. Indira Gandhi.

145. Mrs. Indira Gandhi, the Prime Minister, had returned from an official tour of Orissa in the evening of October 30, 1984. The day followed was Wednesday. In the early hours of every Wednesday, Mrs. Indira Gandhi used to meet people in groups. So it was called "Darshan Day". Unfortunately, she did not adhere to that usual programme. The "Darshan" was cancelled because of another engagement. That engagement was with well-known actor and writer Peter Ustinov. His crew was to record an interview with Mrs. Indira Gandhi for Irish Television. They were waiting at Bungalow No. 1, Akbar Road, the home office of the Prime Minister. The two buildings are connected by a narrow cemented pathway. They are located practically in one campus, but separated by a sentry gate which is known as the "TMC Gate." This is the place where hidden hands sent shock waves to the Nation. Mrs. Indira Gandhi at about 9.10 a.m. emerged from her house with her loyal assistants and a faithful servant. Immediately behind her was Head Constable Narayan Singh (PW 9) holding an umbrella to protect her against the Sun. Rameshwar Dayal (PW 10) an Assistant Sub-Inspector, Nathu Ram (PW 64), her personal attendant and R.K. Dhawan. Special Assistants were closely following Mrs. Gandhi. All were on the cemented pathway. Mrs. Gandhi was at the head of the entourage. She was approaching the TMC gate where Beant Singh, S.I. was on the left side while Satwant Singh, Constable was on the right side. They had managed to station themselves together near the TMC gate. Beant Singh got exchanged his duty with S.I. Jai Narain (PW 7). Satwant Singh ought to be at Beat No. 4. He, however, managed to get TMC sentry booth by misrepresenting that he was suffering from dysentery. He was given that place since it was near the latrine. Beant Singh was armed with his service revolver while Satwant Singh had SAF Carbine. When Mrs. Gandhi reached near the TMC gate, Beant Singh opened fire from his carbine. Beant Singh fired five rounds and Satwant Singh released 25 bullets at Mrs. Gandhi. Then and there Mrs. Gandhi fell down never to get up. She was immediately rushed to the All

India Institute of Medical Sciences (AIIMS). There a team of doctors fought their losing battle to save the life of the slain Prime Minister.

146. Rameshwar Dayal (PW 10) who was following Mrs. Gandhi also received bullet injuries as a result of the shots fired by the accused.

147. At the spot of the incident, the two assassins are alleged to have thrown their arms and said "I have done what I have to do. Now you do what you have to do." The personnel of the Indo-Tibetan Boarder Police (ITBP) pounced on them and took them off to the guard room. What happened inside the guard room is not on the record. The fact, however, remains that both the assassins had been shot by the ITBP personnel. They were soon removed to the hospital where Beant Singh was pronounced dead and Satwant Singh was found to be critically injured. Satwant Singh survived after 15 days treatment. He is accused No.1 in this case. Balbir Singh and Kehar Singh are the other two accused. They are said to be parties to the conspiracy to eliminate Mrs. Indira Gandhi. Balbir Singh was an S.I. posted in the security at the residence of the Prime Minister. Kehar Singh was an Assistant in the Directorate General of Supply and Disposal, New Delhi. He is related to S.I. Beant Singh.

148. After the investigation, the charge-sheet was filed against the three appellants. They were accused of offences under Ss. 120-B, 109 and 34 read with Section 302 of the IPC and also of substantive offences under Sections 302 and 307 of the IPC and Sections 27, 54 and 59 of the Arms Act. It may be mentioned that the report also names Beant Singh as one of the accused but since he had died, the charges against him were said to have abated.

149. In due course, the accused were committed to take their trial in the Court of Session. In the meanwhile, the High Court of Delhi issued two notifications. By one notification, the High Court directed the trial of the case shall be held in the Central Jail, Tihar according to law. By another notification, the High Court directed that "the case be tried by Shri Mahesh Chandra, Additional Sessions Judge, New Delhi." In pursuance of the above notifications, the accused were tried in Central Jail, Tihar. The learned trial Judge found the accused guilty of all the charges framed against them and sentenced them as earlier stated.

150. There were two appeals before the High Court of Delhi challenging the conviction and sentence. Satwant singh preferred Criminal Appeal No. 28 of 1986. Balbir Singh and Kehar Singh together preferred Criminal Appeal No. 29 of 1986. These appeals were listed along with the Murder Reference No. 2 of 1986, before

a Bench consisting of three Judges. The learned Judges, in the course of hearing, also paid a visit to the scene of the crime to get acquainted with the topography of the place of incident. After considering the material on record, the High Court accepted murder Reference 2/86 and confirmed the conviction and the sentence of death on all the accused. The High Court also confirmed the other sentences of Satwant Singh. Consequently, the appeals preferred by the accused were dismissed.

151. In these appeals, the accused are challenging the validity of their trial and the legality of their conviction and sentence. The contentions raised as to legality of the trial admit of being summarised and formulated thus:

(i) whether the High Court has power to direct the trial of the case at a place other than the normal seat of the Court of Session? (ii) whether the trial inside the jail premises is the very antithesis of an open trial? (iii) whether the trial proceedings were devoid of sufficient safeguards to constitute a public trial? and (iv) whether the Court's refusal to call for the statements made by certain prosecution witnesses before the Thakkar Commission was justified?

152. I will deal with these questions in turn.

153. Mr. R.S. Sodhi (*amicus curiae*) appeared for accused No. 1 and Mr. Ram Jethmalani, Senior Advocate (*amicus curiae*), appeared for accused Nos. 2 and 3. Mr. G. Ramaswamy, Additional Solicitor General appeared for the State. Both sides of the case have been placed before us with care and skill.

Re : Question (i):

154. Patiala House is the place where the Court of Session at Delhi shall ordinarily hold its sittings. On May 10, 1985, the Delhi High Court, however, issued a notification in exercise of the powers conferred by Section 9(6) of the Code of Criminal Procedure 1973 ("Code") directing that the session case relating to State v. Satwant Singh and Ors. (F.I.R., No. 241 of 1984) shall be held in the Central Jail, Tihar. The notification reads:

"In exercise of the power conferred by Section 9(6) of the Code of Criminal Procedure, 1973 the Hon'ble the Chief Justice and Judges of this Court have been pleased to order that the trial of the Sessions Case relating to FIR No. 241/84 of the Arms Act, State v. Satwant Singh and Ors. shall be held in the Central Jail, Tihar, according to law."

By Order of the Court
Sd/- (Usha Mehra)
Registrar"

155. On the same day, the High Court passed another order under Section 194 of the Code designating Shri Mahesh Chandra, Additional Sessions Judge as the Judge to try the said case. Shri Mahesh Chandra was a Senior District and Sessions Judge at the Courts in New Delhi within the jurisdiction of which the offence was committed. The case of the appellants is that the High Court has no jurisdiction to issue the first notification directing the trial at Tihar Jail. It is argued that Section 9(6) confers power on the High Court to specify by notification a place or places at which criminal trials can be held by the Court of Session in the Union Territory of Delhi. The requirement of a notification of the High Court of the place or places where the Court of Session will function is intended to facilitate the process of public participation. Such a notification, it is submitted, has already been issued by the High Court of Delhi. The whole of the Union Territory, it is pointed out, comprises of one division of district....Originally, the trials in cases pertaining to the entire territory were conducted only at the District Court Complex in Tis Hazari. With the increase of Sessions Cases, the Court of Session was also authorised to hold its sittings at the Parliament Street Courts (now shifted to Patiala House) in New Delhi and the District Court Complex at Shahdra. It is pointed out that Shri Mahesh Chandra himself was holding court at Patiala House in relation to certain other cases, and therefore, he can ordinarily hold his sittings only at Patiala House even for the present case. It is also submitted that Section 9(6) empowers the High Court only to specify the place or places at which all, or any class of the cases pertaining to a division can be heard and does not empower the High Court to specify the place or places of hearing for individual cases. The choice of any other place for holding the sittings, wholly or partly, in any particular case lies within the power of the trial Judge. The trial Judge may exercise that power for the general convenience of parties and witnesses when agreed to by both the parties.

156. The High Court did not accept these submissions. In substance, it was held that the actual location of a Court can be decided by the High Court either generally or with reference to a particular court or even with reference to a particular case if there is compelling reason. The High Court also said that the fact that it is done with reference to a particular case impairs nobody's fundamental right and is also not discriminatory, as no offender has a vested right to be tried at the usual seat of the Court of Session.

157. The High Court, in my judgment, is right in reaching the above conclusion.

158. Section 9(6) provides :

“Section 9. Court of Session :

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification specify but if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sitting at any other place in the Sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.”

159. Sub-section (6) can be conveniently divided into two parts. The first part provides power to the High Court to notify the place or places for the Court of Session to hold its sittings for disposal of cases. The second part deals with the power of the Court of Session in any particular case to hold its sittings at a place not notified by the High Court.

160. The real question which we have to determine is, what do the words ‘place or places’ mean in the context in which we find it in the first part of sub-section (6), and in the legal landscape of other allied provisions in the Code?

161. There is a great deal of juristic writing on the subject of statutory interpretation, and I make no attempt here to summarise it all. I will do it elsewhere in this judgment when dealing with question No. (iv). Here I do not want to spend more of my time since I need not search for the meaning of the word. The word ‘place’ with which we are concerned has been defined under the Code. Section 2 (p) of the Code defines ‘place’. It is an inclusive definition. The ‘place’ as defined includes a house, building, tent, vehicle, and vessel.

162. “The words too, are empirical signs, not copies or models of anything....The words are slippery customers....” Says Colin Cherry (On Human Communication at 10). The interpretation of a word must, therefore, depend upon the text and the context. As O. Chinnappa Reddy, J., said : “If the text is the texture, the context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A Statute is best interpreted when we know why it was enacted.” (Reserve Bank of India v. Peerless G.F. & I. Co. : AIR 1987 SC 1023 at p.1042).

163. The words “place or places” used in Section 9(6) apparently

indicates that there could be more than one place for the sitting of the Court of Session. The different places may be notified by different notifications. There may be a general notification as well as a special notification. The general notification may specify the place for the class of cases where Court of Session shall sit for disposal. The special notification may specify the same place or a different place in respect of a particular case.

164. Adroitly, it is said that the words and sections like men do not have their full significance when standing alone. Like men, they are better understood by the company they keep. Section 9(4) and Section 194 of the Code are the closely related sections. They may also be examined in order to understand the true meaning of the word “place or places” in the first part of Section 9(4).

165. Section 9(4) reads:

“The Sessions Judge of the Session division, may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.”

166. Section 9(4) empowers the High Court to appoint a Sessions Judge of one division to sit at such place or places in another division for disposal of cases. The High Court while so appointing need not direct him to sit only at the ordinary place of sittings of the Court of Session. There is no such constraint in Section 9(4). The High Court may also issue a separate notification under section 9(6) specifying the place or places where that Sessions Judge should sit for disposal of cases.

167. Section 194 provides :

“Additional and Assistant Sessions Judges to try cases made over to them. — An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or *as the High Court may, by special order, direct him to try.*”

(Emphasis supplied)

168. Section 194 provides power to the High Court to make a special order directing an Additional or Assistant Sessions Judge of the same division to try certain specified cases or a particular case. If the High Court thinks that the Additional or Assistant Sessions

Judge should hold the Court at a specified place, a separate notification could be issued under Section 9(6).

169. The argument that the first part of Section 9(6) should be read along with the second part thereof has, in the context, no place. The first part provides power to the High Court. It is an administrative power, intended to further the administration of justice. The second part deals with the power of the Court of Session. It is a judicial power of the Court intended to avoid hardship to the parties and witnesses in a particular case. One is independent of and unconnected with the other. So, one should not be confused with the other. The judicial power of the Court of Session is of limited operation, the exercise of which is conditioned by mutual consent of the parties in the first place. Secondly, the exercise of that power has to be narrowly tailored to the convenience of all concerned. It cannot be made use of for any other purpose. This limited judicial power of the Court of Session should not be put across to curtail the vast administrative power of the High Court.

170. Section 9(6) is similar to Section 9(2) of the old Code (Act 5 of 1898). The only difference being that Section 9(2) conferred power on the State Government to specify the place or places where the Court of Session should sit for the purpose of disposal of cases. That power is now vested in the High Court. The change of authorities was made to keep in tune with the separation of judiciary from the executive. The scope of the sections, however, remains the same. In *Lakshman v. Emperor*, AIR 1931 Bom 313, a Special Bench of the Bombay High Court sustained the validity of a similar notification issued under Section 9(2). Patkar J., expressed his view (at 320):

“Under S. 9, sub-section (2), Criminal P.C., the Local Government may, by general or special order, in the official gazette, direct at what place or places the Court of Session shall hold its sittings, but until such order is made the Court of Session shall hold its sittings as heretofore.

It is contended on behalf of the accused that the Local Government has already issued a notification directing the Court of Session to be held at Alibag in certain months commencing on dates to be fixed by the Sessions Judge of Thana, and that the notification dated 5th February, 1931 does not direct any new place where the Court of Session should hold its sitting, and further that the notification does not order the Court of Session to hold its sitting at Alibag, but has directed a particular

Additional Sessions Judge to hold the sitting of his Court at Alibag. Under S. 193 (2) the Local Government had power to direct Mr. Gundil, the Additional Sessions Judge, to try this particular case. The previous orders of the Local Government were general orders under S. 9(2) and there is nothing in Sec. 9(2), to prevent a special order being passed directing at what place a Court of Session should hold its sitting. If by reason of an outbreak of plague or any other cause it becomes necessary or expedient that a Court of Session holds its sittings in respect of all the cases at a different place or should try a particular case at a particular place, the words of S. 9(2) are wide enough to cover such an order. An order passed under S.9(2) is an administrative order passed by the Local Government, and the special order of the Local Government in the present case directing the Additional Sessions Judge to try this particular case at Alibag does not appear to contravene the provisions of Section 9(2)."

171. This appears to be the correct view to be taken having regard to the scheme and object of Section 9(2) of the old Code.

172. In *Ranjit Singh v. Chief Justice*, (1985) 28 Delhi LT 153 : (1986 Cri LJ 632) the Delhi High Court while considering the validity of a like notification proclaimed more boldly (at 157) (of Delhi LT) : (at p. 635 of AIR):

"Section 9(6) recognises that the Court of Session if it wishes to hold its sitting at another place can only do so with the consent of prosecution and the accused. As to the specifying of places of sitting of Court of Session no such restriction is there and it is left to the best judgment of the High Court. Of course, this does not mean that such a power can be exercised arbitrarily. But then it must be noted that Courts have consistently held that where power is vested in a High Official it must ordinarily be presumed that the power is exercised in a *bona fide* and reasonable manner. Surely, it is a reasonable presumption to hold that when the Full Court exercise its power, like in the present case, directing that the Court of Session may hold its sitting at a place other than its ordinary place of sitting considerations of the interest of justice, expeditious hearing of the trial and the requirement of a fair and open trial are considerations which have weighed with the High Court in issuing the impugned notification. It should be borne in mind that very rarely does the High Court exercise its power to

direct any particular case to be tried in jail. When it does so it is done only because of overwhelming consideration of public order, internal security and a realisation that holding of trial outside jail may be held in such a surcharged atmosphere as to completely spoil and vitiate the court atmosphere where it will not be possible to have a calm, detached and fair trial. It is these considerations which necessitated the High Court to issue the impugned notification. Decision is taken on these policy considerations and the question of giving a hearing to the accused before issuing the notification is totally out of place in such matters. These are matters which evidently have to be left to the good sense and to the impartiality of the Full Court in taking a decision in a particular case.

173. It seems to me that the High Court of Delhi is also right in observing that it is unnecessary to hear the accused or anybody else before exercising the power under Section 9(6). Such a hearing, however, is required to be given by the Court of Session if it wants to change the normal place of sitting, in any particular case, for the general convenience of parties and witnesses.

174. From the foregoing discussion and the decisions, it will be clear that the impugned notification of the High Court of Delhi directing that the trial of the case shall be held at Tihar Jail is not *ultra vires* of Section 9(6) of the Code.

Re: Question (ii) :

175. It is argued that public trial is a fundamental requirement of the Constitution and is a part of the constitutional guarantee under Article 21. A public trial in jail in the very nature of things is neither desirable nor possible. The massive walls, high gates, armed sentries at every entrance and the register maintained for noting the names of the visitors are said to be the inhibiting factors to keep away the potential visitors. People generally will not venture to go to jail and it is said, that jail is notionally and psychologically a forbidden place and can never be regarded as a proper place for public trial.

176. The High Court rejected these contentions. The High Court, however, proceeded on the assumption that "a public trial is a part of the constitutional guarantee under Article 21 of our Constitution. It is unnecessary to deal with that aspect in this case. In *A.K. Roy v. Union of India*, (1982) 2 SCR 272 : (AIR 1982 SC 710), Chandrachud, C.J., speaking for the Constitution Bench said (at 354 of SCR) : (at p.752 of AIR) :

"The right to public trial is not one of the guaranteed rights under our Constitution as it is under the Sixth Amendment of the American Constitution which secures to persons charged with crimes a public, as well as speedy trial. Even under the American Constitution, the right guaranteed by the Sixth Amendment is held to be personal to the accused which the public in general cannot share."

177. The right of an accused to have a public trial in our country has been expressly provided in the Code., and I will have an occasion to consider that question a little later. The Sixth Amendment to the United States Constitution provides "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury...." No such right has been guaranteed to the accused under our Constitution.

178. The argument that jail can never be regarded as proper place for a public trial appears to be too general. The jail trial is not an innovation. It has been there before we were born. The validity of jail trial with reference to Section 352 of the Code of 1898 since re-enacted as Section 327 (1) has been the subject matter of several decisions of different High Courts. The High Court in this case has examined almost all those decisions. I will refer to some of them with laconic details. Before that, it is better to have before us Section 352 of the Code of 1898. It reads :

"352. Courts to be open – The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial or, any particular case, that the public generally, or any particular person, shall not have access or be or remain in, the room or building used by the Court."

179. In *Sahai Singh v. Emperor*, AIR 1917 Lahore 311, the accused were convicted and sentenced in the trial held in a jail. Their conviction was challenged before the High Court at Lahore on the ground, amongst others, that the trial was vitiated because it was held in the jail. The High Court rejected the contention stating :

"It is necessary that I should first mention a contention that

the whole trial is vitiated because it was held in the jail. Counsel for some of the appellants has referred to S. 352, Criminal Procedure Code, but there is nothing to show that admittance was refused to any one who desired it, or that the prisoners were unable to communicate with their friends or Counsel. No doubt it is difficult to get Counsel to appear in the jail and for that reason, if for no other, such trials are usually undesirable, but in this case the Executive Authorities were of the opinion that it would be unsafe to hold the trial elsewhere."

In *Kailash Nath v. Emperor*, AIR 1947 All 436, the Allahabad High Court said that there is no inherent illegality in jail trials if the Magistrate follows the rules of Section 352 and the place becomes something like an open Court.

180. The practice of having trials inside jails as the High Court has rightly pointed out, seems to have persisted even after the coming into force of the Constitution. In *re : M.R. Venkataraman*, AIR 1950 Mad 441 the High Court of Madras after referring to the decisions in *Kailash Nath's* case and *Sahai's* case, observed (at 442) :

"Again, if the conveyance of prisoners, and the accused to and from the court house or other buildings, will be attended with serious danger of attack, and the rescue of the accused or the prisoners, or with heavy cost to the Government in providing an armed escort, it may well be within the powers of the Judge or Magistrate, after due consideration of the public interests and after writing down the reasons in each case, to hold the trials even inside the jail premises, where the accused are confined."

181. In *re : T.R. Ganeshan*, AIR 1950 Mad 696, the Madras High Court was again called upon to consider the validity of a jail trial. In this case, the trial was held in recreation room which was within the jail compound. The building consisted of a hall and verandah on two sides. It was situated at some distance from the prison walls proper. It was accessible to the public. The press reporters, some members of the Bar and public also attended the trial proceedings. The High Court upheld the validity of that trial. The High Court also said that in the interest of justice and fair trial of the case itself that, in certain circumstances and in some cases, the public may be excluded.

182. The Calcutta High Court in *Prasanta Kumar v. The State*, AIR 1952 Cal 91 and Madhya Pradesh High Court in *Narwar Singh*

v. State, AIR 1952 Madh Bha 193 at p. 195 recognised the right of the Magistrate to hold Court in jail for reasons of security for accused, for witnesses or for the Magistrate himself or for other valid reasons.

183. It may now be stated without contradiction that jail is not a prohibited place for trial of criminal cases. Nor the jail trial can be regarded as an illegitimate trial. There can be trial in jail premises for reasons of security to the parties, witnesses and for other valid reasons. The enquiry or trial, however, must be conducted in open Court. There should not be any veil of secrecy in the proceedings. There should not even be an impression that it is a secret trial. The dynamics of judicial process should be thrown open to the public at every stage. The public must have reasonable access to the place of trial. The Presiding Judge must have full control of the Court house. The accused must have all facilities to have a fair trial and all safeguards to avoid prejudice.

184. In the present case there is no reason to find fault with the decision of the High Court to have the trial in Tihar jail. The records show that the situation then was imperative. The circumstances which weighed with the High Court may be gathered from a letter dated May 8, 1985, addressed by the Home Secretary to the Registrar of the High Court. The relevant portion of the letter reads :

"The case is of very special nature and of utmost importance. The assassination of the late Prime Minister had provoked violence and security of State besides the maintenance of law and order had become vital problems for Administration. There is every risk of breach of public peace and disturbance of law and order, if the trial is held in an open place. The lives of the trial Judge, prosecutor and those otherwise involved in the prosecution of the case may be jeopardised. It is on record that during committal proceeding the Magistrate and Prosecutor concerned were threatened with dire consequences as they were working for a successful prosecution. The circumstances in which the Hon'ble High Court was pleased to accept the prayer of the Administration for conducting remand and committal proceedings in Central Jail, Tihar continue to exist. It is not only for the security of the Judge, witnesses, Police Officers and others but also for the safety of the accused themselves that the trial of the case may be held in Central Jail, Tihar."

185. The letter reveals a grim picture of the then existing situation. It is said that the assassination of Smt. Indira Gandhi had provoked widespread violence threatening the security of the State and the

maintenance of law and order. The remand and the committal proceedings had to be taken in Tihar Jail since the Magistrate and Prosecutor were threatened with dire consequences. It is also said that such circumstances continued to exist when the case came up for trial. The letter ends with a request to have the trial of the case in Tihar Jail for the security of the Judge, witnesses, Police Officers and also for the safety of the accused themselves. The High Court also has taken note of the events that immediately followed the assassination of Smt. Gandhi. Beant Singh one of the assassins was shot dead and Satwant Singh who is the accused herein received near fatal gun shot injury.

186. That is not all. There was unprecedented violence aftermath in the national capital and other places. Frenzied mob armed with whatever they could lay their hands on were seen besieging passing Sikhs and burning their vehicles, as doctors in the hospital fought their vain battle to save the life of Mrs. Indira Gandhi. Even President Zail Singh's cavalcade, making its way from the Airport to the hospital was not spared. The reaction of outrage went on unabated followed by reprisal killings and destruction of properties. The local police force was badly shaken. They could do little even to contain the violence. The Army had to be deployed to stem the tide of deluge. The new Prime Minister, Mr. Rajiv Gandhi made an unscheduled broadcast to the Nation pleading for sanity and protection to the Sikhs. Nevertheless three days passed on with murder and loot leaving behind a horrendous toll of more than two thousand dead and countless properties destroyed. It is a tragedy frightening even to think of. This has been referred to in the report (at 11 to 15) of Justice Ranganathan Misra Commission of Inquiry. These unprecedented events and circumstances, in my judgment, would amply justify the decision of the High Court to direct that the trial of the case should take place in Tihar Jail.

Re : Question (iii) :

187. The question herein for consideration is whether the trial held in Tihar Jail was devoid of sufficient safeguards to constitute an open trial?

188. As a preliminary to the consideration of this question, it is necessary to understand the scope of sec. 327 (1) of the Code. The section provides :

“Sec. 327. Court to be open:

(1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be

an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access, to or be or remain in, the room or building used by the Court."

189. The main part of sub-sec. (1) embodies the principle of public trial. It declares that the place of inquiry and trial of any offence shall be deemed to be an open Court. It significantly uses the words "open Court". It means that all justice shall be done openly and the Courts shall be open to public. It means that the accused is entitled to a public trial and the public may claim access to the trial. The sub-section, however, goes on to state that "the public generally may have access so far as the place can conveniently contain them". What has been stated here is nothing new. It is implicit in the concept of a public trial. The public trial does not mean that every person shall be allowed to attend the court. Nor the court room shall be large enough to accommodate all persons. The court may restrict the public access for valid reasons depending upon the particular case and situation. As Judge Cooley states (Cooley's Constitutional Law, Vol. 1, 8th Ed. at 647):

"It is also requisite that the trial be public. By this is not meant that every person who seems fit shall in all cases be permitted to attend criminal trials; because there are many cases where, from the character of the charge and the nature of the evidence by which it is to be supported, the motives to attend the trial on the part of portions of the community would be of the worst character, and where regard for public morals and public decency would require that at least the young be excluded from hearing and witnessing the evidences of human depravity which the trial must necessarily bring to light. The requirement of a trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility into the importance of their functions and the requirement is fairly observed if, without partiality or favouritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would

only be drawn thither by a prurient curiosity, are excluded altogether."

190. The proviso to sub-sec. (1) of Sec. 327 specifically provides power to the Presiding Judge to impose necessary constraint on the public access depending upon the nature of the case. It also confers power on the Presiding Judge to remove any person from the court house. The public trial is not a disorderly trial. It is an orderly trial. The Presiding Officer may, therefore, remove any person from the Court premises if his conduct is undesirable. If exigencies of a situation require, the person desiring to attend the trial may be asked to obtain a pass from the authorised person. Such visitors may be even asked to disclose their names and sign registers. There may be also security checks. These and other like restrictions will not impair the right of the accused or that of the public. They are essential to ensure fairness of the proceedings and safety to all concerned.

191. So much as regards the scope of public trial envisaged under Sec. 327 (1) of the Code. There are yet other fundamental principles justifying the public access to criminal trials : The crime is a wrong done more to the society than to the individual. It involves a serious invasion of rights and liberties of some other person or persons. The people are, therefore, entitled to know whether the justice delivery system is adequate or inadequate. Whether it responds appropriately to the situation or it presents pathetic picture. This is one aspect. The other aspect is still more fundamental. When the State representing the society seeks to prosecute a person, the State must do it openly. As Lord Shaw said with most outspoken words (*Scott v. Scott*, 1913 AC 417 at p. 477):

"It is needless to quote authority on this topic from legal, philosophical, or historical writers. It moves Bentham over and over again. 'In the darkness of secrecy, sinister interest and evil in every shape have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice.' 'Publicity is the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under-trial.' 'The security of securities is publicity.' But amongst historians the grave and enlightened verdict of Hallam, in which he ranks the publicity of judicial proceedings even higher than the rights of Parliament as a guarantee of public security, is not likely to be forgotten : 'Civil liberty in this kingdom has two direct guarantees; the open

administration of justice according to known laws truly interpreted, and fair constructions of evidence; and the right of Parliament, without let or interruption, to inquire into, and obtain redress of, public grievances. Of these, the first is by far the most indispensable, nor can the subjects of any State be reckoned to enjoy a real freedom, where this condition is not found both in its judicial institutions and in their constant exercise.....”

192. In open dispensation of justice, the people may see that the State is not misusing the State machinery like the Police, the Prosecutors and other public servants. The people may see that the accused is fairly dealt with and not unjustly condemned. There is yet another aspect. The courts like other institutions also belong to people. They are as much human institutions as any other. The other instruments and institutions of the State may survive by the power of the purse or might of the sword. But not the Courts. The Courts have no such means or power. The Courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing Courts more and more to public gaze.

193. There are numerous benefits accruing from the public access to criminal trials. Beth Hornbuckle Fleming in his article “First Amendment Right of Access to Pretrial Proceedings in Criminal Cases” [Emory Law Journal, v. 32 (1983) pp. 618 to 688] neatly recounts the benefits identified by the Supreme Court of the United States in some of the leading decisions. He categorizes the benefits as the “fairness” and “testimonial improvement” effects on the trial itself, and the “educative” and “sunshine” effects beyond the trial. He then proceeds to state:

“Public access to a criminal trial helps to ensure the fairness of the proceeding. The presence of public and press encourages all participants to perform their duties conscientiously and discourages misconduct and abuse of power by judges, prosecutors and other participants. Decisions based on partiality and bias are discouraged, thus protecting the integrity of the trial process. Public access helps to ensure that procedural rights are respected and that justice is applied equally.

Closely related to the fairness function is the role of public access in assuring accurate fact finding through the improvement of witness testimony. This occurs in three ways. First, witnesses are discouraged from committing perjury by the presence of members of the public who may be aware of the truth. Second,

witnesses like other participants, may be encouraged to perform more conscientiously by the presence of the public, thus improving the overall quality of testimony. Third, unknown witnesses may be inducted to come forward and testify if they learn of the proceedings through publicity. Public access to trials also plays a significant role in educating the public about the criminal justice process. Public awareness of the functioning of judicial proceedings is essential to informed citizen debate and decision-making about issues with significant effects beyond the outcome of the particular proceeding. Public debate about controversial topics, such as, exclusionary evidentiary rules, is enhanced by public observation of the effect of such rules on actual trials. Attendance at criminal trials is a key means by which the public can learn about the activities of police, prosecutors, attorneys and other public servants, and thus make educated decisions about how to remedy abuses within the criminal justice system.

Finally, public access to trials serves an important "sunshine" function. Closed proceedings, especially when they are the only judicial proceedings in a particular case or when they determine the outcome of subsequent proceedings, may foster distrust of the judicial system. Open proceedings enhance the appearance of justice and thus help to maintain public confidence in the judicial system."

194. With these observations, let us now hark back to the safeguards provided to ensure an open trial in this case. First, let us have an idea of the building in which the trial took place. The Office Block of the Jail Staff was used as the Court House. It is an independent building located at some distance from the main Jail complex. In between there is a courtyard. This courtyard had direct access from outside. A visitor after entering the courtyard can straight go to the Court House. He need not get into the Jail complex. This is evident from the sketch of the premises produced before us. It appears the person who visits the Court House does not get any idea of the Jail complex in which there are Jail Wards and Cells. From the sketch, it will be also seen that the building comprises of a Court-hall, Bar room and chamber for the Judge. The Court hall can be said to be of ordinary size. It has seating capacity for about fifty with some more space for those who could afford to stand. The accused as undertrial prisoners were lodged at Jail No. 1 inside the Jail complex. It was at a distance of about 1 km from the Court House. For trial

purposes, the accused were transported by van. In the Court hall, they were provided with bullet proof enclosure.

195. This is a rough picture of the Court House where the accused had their trial. For security reasons, the public access to trial was regulated. Those who desired to witness the trial were required to intimate the Court in advance. The trial Judge used to accord permission to such persons subject to usual security checks. Before commencement of the trial of the case, the representatives of the Press and News Agencies, national and international, approached the trial Judge for permission to cover the Court proceedings. The representatives of BBC, *London Times*, *New York Times* and *Associated Press* were some of them. The trial Judge allowed their request by his order dated May 15, 1985 in the following terms :

"I do feel that in the best traditions of the trial, the press is permitted to cover the proceedings of the trial in the case. In view thereof I think it just and proper to allow the press to cover the proceedings. Without exception the news agencies would have a right to cover the proceedings through a representative. So far as individual papers are concerned, efforts would be made to accommodate as many of them as security and space would permit. In view thereof, it is directed that a letter be addressed to the Supdt. Jail, Tihar with the request that the press representatives may be allowed to enter and have access to the Court room where the proceedings would be held in the jail. It would be open to the Supdt. Jail to put such restrictions as regards security check-up or production of accreditation cards or identity cards as he considers necessary."

196. On May 20, 1985, Kehar Singh (A-3) filed an application before the trial court contending that the trial should be held in open Court at Patiala House, New Delhi and not in Central Jail, Tihar. The State filed an objection contending *inter alia* :

"That regulated entry has been made for the safety of the accused and for the general safety of the others concerned with the trial. Every specific request of the accused and others to attend the trial has been allowed by the Court. The entry of the Court room is merely regulated in the interest of safety. A blanket charter to permit every person known or unknown or whose antecedents are not proper can very much defeat the ends of justice. Not only it has to be ensured that a fair trial is given, but it has also to be kept in view of the prevailing

peculiar situation, the security is not jeopardized at any cost. The members and the relatives of the accused have been permitted by the Court to be present at the time of hearing. It was, therefore, not a closed or secret trial.

* * * *

In view of the prevailing situation and peculiar circumstances, the Hon'ble High Court has *vide* its order chosen the venue of trial. The only proper venue for a trial like this is jail. Even this learned Court would have opted for the same in view of the security risk, nature of the crime, persons involved and keeping in view the other allied circumstances of the case. It was also stated, "that the case as is and product of misguided fundamentalism and terrorism. In the prevailing atmosphere in the country, the accused as well as the witnesses are in grave danger of outside terrorists attacks and this has to be safeguarded. Transport of accused persons at set times from and to the jail is fraught with danger."

197. The application of the accused and the objections thereof were considered and disposed of by order dated June 5, 1985. The relevant portion of the order reads:

".....There can be no dispute that public has a right to know but it is precisely for this purpose that National and International Press has been allowed to be present in the Court during the entire trial. The press is the most powerful watch-dog of the public interest and, certainly, we in India have not only free but also a very responsible press and interests of general public are quite safe in their hands. It is not merely Indian press representatives and the news agencies which have been allowed to come to attend the trial but the International agency like BBC, *London Times*, *New York Times* and *Associated Press* have also been allowed and admitted and are, in fact, present.

* * * *

It can be categorically declared and placed on record by this Court that all press representatives and news agencies whosoever have sought permission have been without exception granted necessary permission by this Court. I am sure right of public to know about the trial has been more than assured by the presence of the Press in the Court. The suggestion of learned defence counsel that presence of Press is not sufficient guarantee is not a fair comment on a free, fair and responsible Press of India. It would be proper to mention here that to ensure fair trial and judicious administration of justice the presence of defence counsel, the Press and the relations of the accused persons has been allowed...."

198. With reference to the people in the general, it was pertinently observed :

“Nonetheless, space permitting, this Court would not be averse or disinclined to allow public men also to attend the proceedings subject to usual security check-up.”

199. The learned trial Judge did not make the aforesaid observation as an empty formality. True to his words, he did permit access to the members of the public also. He permitted even the Law Students in batches to witness the trial. This we could see from the extract of the visitors' book maintained by the authorities. There is hardly any instance brought to our attention where a person who sought permission was denied access to the Court. The High Court has also considered this aspect carefully. The High Court has observed that the “trial Judge has given access to the place of trial for all members of the public who may be minded to attend the same save for certain reasonable restriction imposed in public interest.” This statement has not been shown to be incorrect. The fact also remains that the accused were represented by leading members of the Bar. Some of the close relatives of the accused were allowed to be present at the trial. All press representatives and news agencies whoever sought permission have been allowed to cover the day-to-day Court proceedings. The trial Judge in his order dated June 5, 1985 has specifically stated this. There can, therefore, be no doubt or dispute as to the adequacy of safeguards provided to constitute an open trial. Indeed, the steps taken by learned trial Judge are more than adequate to ensure fair trial as well as public trial.

200. For the accused, it is argued that the people can assert their right of access to criminal trials in the exercise of their fundamental right guaranteed under Art. 19(1)(a) of the Constitution and they need not be under the mercy of the Court. It is also argued that there shall not be any discrimination in the matter of public access to judicial proceedings and first come first served should be the principle no matter whether one is a press person or an ordinary citizen. The contentions though attractive need not be considered since no member of the public or press is before us making grievance that his constitutional right of access to the trial has been denied in this case. This Court has frequently emphasized that the decision of the Court should be confined to the narrow points directly raised before it. There should not be any exposition of the law at large and outside the range of facts of the case. There should not be even obiter observations in regard to questions not directly involved in the

case. These principles are more relevant particularly when we are dealing with constitutional questions. I should not transgress these limits. However, the decisions referred to us may be briefly touched upon here.

201. In *Naresh Shridhar Mirajkar v. State of Maharashtra*, (1963) 3 SCR 744 : (AIR 1967 SC 1) this Court had an occasion to consider the validity of a judicial verdict of the High Court of Bombay made under the inherent powers. There the learned Judge made an oral order directing the Press not to publish the evidence of a witness given in the course of proceedings. That order was challenged by a journalist and others before this Court on the ground that their fundamental rights guaranteed under Art. 19(1)(a) and (g) have been violated. Repelling the contention, Gajendragadkar, CJ, speaking for the majority view, said (at pp. 760-61) (of SCR) : (at p. 11 of AIR) :

The argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the Court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by Court in or in relation to a matter brought before it for its decisions cannot be said to affect the fundamental rights of citizens under Art. 19(1)."

202. There is trilogy of decisions of the Supreme Court of United States dealing with the constitutional right of the public access to criminal trials.

203. In *Gannett Co. v. De Pasquale*, (1979) 443 US 368, the defendants were charged with murder and requested closure of the hearing of their motion to suppress allegedly involuntary confessions and physical evidence. The prosecution and the trial Judge agreed and said that closure was necessary. The public and the press were denied access to avoid adverse publicity. The closure was also to ensure that the defendants' right to a fair trial was not jeopardized. The Supreme Court addressed to the question whether the public has an independent constitutional right of access to a pre-trial judicial proceedings, even though the defendant, the prosecution, and the trial Judge had agreed that closure was necessary. Explaining that

the right to a public trial is personal to the defendant, the Court held that the public and press do not have an independent right of access to pre-trial proceedings under the sixth Amendment.

204. Although the Court in *Gannett* held that no right of public access emanated from the sixth Amendment it did not decide whether a constitutional right of public access is guaranteed by the first amendment. This issue was discussed in *Richmond Newspapers Inc. v. Virginia*, (1980) 448 US 555. This case involved the closure of the court-room during the fourth attempt to try the accused for murder. The United States Supreme Court considered whether the public and press have a constitutional right of access to criminal trials under the first amendment. The Court held that the first and fourteenth amendments guarantee the public and press the right to attend criminal trials. But the *Richmond Newspapers* case still left the question as to whether the press and public could be excluded from trial when it may be in the best interest of fairness to make such an exclusion. That question was considered in the *Globe Newspapers Co. v. Superior Court* (1982) 457 US 596 : 73 Law Ed 2d 248. There the trial Judge excluded the press and public from the court room pursuant to a Massachusetts statute making closure mandatory in cases involving minor victims of sex crimes. The Court considered the constitutionality of the Massachusetts statute and held that the statute violated the first amendment because of its mandatory nature. But it was held that it would be open to the Court in any given case to deny public access to criminal trials on the ground of State's interest. Brennan, J., who delivered the opinion of the Court said (at pp. 258-59) :

"We agree with appellee that the first interest safeguarding the physical and psychological well-being of a minor is a compelling one. But as compelling as that interest is, it does not justify a mandatory closure rule, for it is clear that the circumstances of the particular case may determine on a case by case basis whether closure is necessary to protect the welfare of a minor victim. Among the factors to be weighed are the minor victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victims, and the interests of parents and relatives.

* * * *

....Such an approach ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary to protect the State's interest."

205. It will be clear from these decisions that the mandatory exclusion of the press and public to criminal trials in all cases violates

the First Amendment to the United States Constitution. But if such exclusion is made by the trial Judge in the best interest of fairness to make that exclusion, it would not violate that constitutional rights.

206. It is interesting to note that the view taken by the American Supreme Court in the last case, runs parallel to the principles laid down by this Court in Naresh Shridhar Mirajkar case (AIR 1967 SC 1).

Re : Question (iv) :

207. There remains, however, the last question formulated earlier in this judgment, namely, whether the trial Court was justified in refusing to call for the statements of witnesses recorded by the Thakkar Commission?

208. For a proper consideration of the question, it will be necessary to have a brief outline of certain facts.

209. Soon after the assassination of Mrs. Indira Gandhi, the Government of India, by Notification dated November 20, 1984, constituted a Commission under the Commissions of Inquiry Act, 1952 (the "Act"). The Commission was presided over by Mr. Justice M.P. Thakkar, the sitting Judge of this Court. The Commission was asked to make an enquiry with respect to the matters :

- (a) the sequence of events leading, and all the facts relating to, the assassination of the late Prime Minister;
- (b) whether the crime could have been averted and whether there were any lapses or dereliction of duty in this regard on the part of any of the commission of the crime and other individuals responsible for the security of the late Prime Minister.
- (c) the deficiencies, if any, in the security system and arrangements as prescribed or as operated in practice which might have facilitated the commission of the crime;
- (d) the deficiencies, if any, in the procedures and measures as prescribed, or as operated in practice in attending to and providing medical attention to the late Prime Minister after the commission of the crime; and whether there was any lapse or dereliction of duty in this regard on the part of the individuals responsible for providing such medical attention;
- (e) whether any person or persons or agencies were responsible for conceiving, preparing and planning the assassination and whether there was any conspiracy in this behalf, and if so, all its ramifications.

210. The Commission was also asked to make recommendations

as to the corrective remedies and measures that need to be taken for the future with respect to the matters specified in clause (d) above.

211. On December 5, 1984, the Commission framed regulations under Sec. 8 of the Act in regard to the procedure for enquiry. Regulation 8 framed thereon reads : "In view of the sensitive nature of the enquiry, the proceedings will be in camera unless the Commission directs otherwise." Accordingly, the Commission had its sittings in camera. On November 19, 1985, the Commission submitted an interim report to the Government followed by the final report on February 27, 1986.

212. In the normal course, the Government ought to have placed the report of the Commission under S. 3(4) of the Act before the House of the People within six months of the submission of the report. But the Government did not do that. The steps were taken to amend the Commissions of Inquiry Act. On May 14, 1986, the President of India promulgated Ordinance No. 6 of 1986 called the Commissions of Inquiry (Amendment) Ordinance 1986 by which sub-sections (5) and (6) were introduced to S. 3 as follows :

"(5) The provisions of sub-sec. (4) shall not apply if the appropriate Government is satisfied that in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign State or in the public interest, it is not expedient to lay before the House of the People or, as the case may be, the Legislative Assembly of the State, the report, or any part thereof, of the Commission on the Inquiry made by the Commission under sub-sec. (1) and issues a notification to that effect in the Official Gazette.

(6) Every notification issued under sub-sec. (5) shall be laid before the House of the people or, as the case may be the Legislative Assembly of the State, if it is sitting as soon as may be after the issue of the notification, and if it is not sitting, within seven days of its reassembly and the appropriate Government shall seek the approval of the House of the People or, as the case may be, the Legislative Assembly of the State, to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People or, as the case may be, the Legislative Assembly of the State makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect, as the case may be."

213. On May 15, 1986, the Central Government issued a

notification under sub-sec. (5) of S. 3 stating :

“The Central Government, being satisfied that it is not expedient in the interest of the security of the State and in the public interest to lay before the House of the People the report submitted to the Government on the 15th November, 1985, and the 27th February, 1986, by Justice M.P. Thakkar, a sitting Judge of the Supreme Court of India appointed under the notification of the Government of India in the Ministry of Home Affairs No. S.O. 867(B) dated the 20th November, 1984, hereby notifies that the said reports shall not be laid before the House of the People.”

214. On August 20, 1986, Ordinance No. 6 was replaced by the Commissions of Inquiry (Amendment) Act, 1986 (Act 36 of 1986) with retrospective effect. The said notification dated May 15, 1986 was also got approved by the House of the People as required under sub-sec. (6) of S. 3.

215. We may now revert to the steps taken by the accused before the trial Court. After the prosecution examines some of the witnesses, accused No. 1 moved the Court with an application dated August 5, 1985 praying for summoning true copies of statements of all persons recorded by the Thakkar Commission and who happened to be the prosecution witnesses in the case. It was stated in the application that the statements should be summoned for the purpose of S. 145 of the Evidence Act. The trial court rejected that application following the decision of this Court in *Ramkrishna Dalmia v. Justice Tendolkar*, 1959 SCR 279 : (AIR 1958 SC 538). The trial Court said that the statements recorded by the Commission are inadmissible in evidence in any subsequent proceedings and cannot therefore be used for the purpose of contradicting the same witnesses under S. 145 of the Evidence Act.

216. Before the High Court, the accused made two applications under S. 391 of the Criminal Procedure Code. On July 16, 1986 accused Nos. 2 and 3 made an application for additional evidence. Accused No. 1 also made a similar application dated July 17, 1986. They wanted the depositions recorded and the documentary evidence received by the Thakkar Commission as additional evidence in the case. They also wanted the High Court to summon the report of the Thakkar Commission.

217. The High Court rejected both the applications in the course of the judgment which is now under appeal. The High Court has stated that it is not proper to compel production of the proceedings

or the report of the Commission in view of the privilege of non-disclosure provided by the Act of Parliament. The High Court also depended upon the decision of this Court in Dalmia's case. The decision therein was held to be an authoritative pronouncement on the scope of S. 6 of the Act and as to the utilisation of statement made by any person before the Commission. The High Court held that the evidence before the Commission is wholly inadmissible in any other Civil or Criminal proceedings except for prosecuting the person for perjury.

218. The principal submission before us is that the High Court has misconstrued the scope of S. 6 of the Act and misunderstood the observations in Dalmia's case (AIR 1958 SC 538). It is also contended that the observation in Dalmia's case cannot be regarded as a binding precedent since this Court was not called upon therein to examine the true scope of S. 6.

219. It is true that the scope of the section as such did not come up for consideration in Dalmia's case (1959 SCR 279 : AIR 1958 SC 538) Das, C.J., while examining the challenge to the validity of the Act and a notification issued thereunder made some observations as to matters of principle (294-295) (of SCR) : (at pp. 546-47 of AIR) :

“The whole purpose of setting up of a Commission of Inquiry consisting of experts will be frustrated and the elaborate process of inquiry will be deprived of its utility if the opinion and the advice of the expert body as to the measures the situation disclosed calls for cannot be placed before the Government for consideration notwithstanding that doing so cannot be to the prejudice of anybody because it has no force of its own. In our view, the recommendations of a Commission of Inquiry are of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects it has in view. From this point of view, there can be no objection even to the Commission of Inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the Commission of Inquiry recommending the imposition of some form of punishment which will, in its opinion, be sufficiently deterrent to delinquents in future. But seeing that the Commission of Inquiry has no judicial powers and its reports will purely be recommendatory and not effective *proprio vigore* and the statement made by any

person before the Commission of Inquiry is under S. 6 of the Act wholly inadmissible in evidence in any future proceedings, civil or criminal."

(Emphasis supplied)

220. Since the argument in the above case did not traverse the scope of S. 6 of the Act, it is now necessary to call attention to the same at length. Before examining the matter, it may not be inappropriate to state that the accused in criminal trials should be given equal opportunity to lay evidence fully, freely and fairly before the Court. The Government which prosecutes an accused will lay bare the evidence in its possession. If the accused asks for summoning any specific document or thing for preparing his case, it should normally be allowed by the Court if there is no legal bar. But "the demand", as Brennan, J. of the Supreme Court of the United States, observed, "must be for production ofspecific documents and should not propose any broad or blind fishing expedition." [Clinton E. Jencks v. United States, (1957) 353 US 657 : 1 L ed 2d 1103 at p. 1111] Ameer Ali, J. in Nizam of Hyderabad v. A.M. Jacob, (1892) ILR 19 Cal 52 at p. 64 made similar observations:

"....he cannot call for anything and everything from anybody and everybody. The thing called for must have some relation to, or connection with the subject-matter of the investigation or enquiry, or throw some light on the proceedings, or supply some link in the chain of evidence."

221. These principles are broadly incorporated for the guidance of Courts under Sections 91 and 233 of the Code.

222. Let us turn to consider in detail the language of the critical section. Section 6 provides:

"No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement...."

* * * *

223. Dissecting the section, it will be clear that the statement made by a person before the Commission, in the first place shall not be the basis to proceed against him. Secondly, it shall not be 'used against him' in any subsequent civil or criminal proceedings except for the purpose set out in the section itself. The single exception

provided thereunder is a prosecution for giving false evidence by such statement.

224. The term “used against” has given rise to controversy. The Bombay High Court in (i) *Sohan Lal v. State*, AIR 1965 Bom 1, and (ii) *State of Maharashtra v. Ibrahim Mohd.*, 1978 Cri LJ 1157 has regarded the observations in *Dalmia’s case* (AIR 1958 SC 538) as an obiter. It was held:

“Whether a particular statement made by a witness before the Commission is used “against him” will depend on the prejudice or detriment caused or likely to cause to the person in civil or criminal proceedings or otherwise. It must, therefore, necessarily depend on the facts and circumstances relating to the use or intended use. Whether any particular prejudice or detriment can be said to result from the use of the statements will also depend on facts. Mere cross-examination under S. 145 can at the most expose his statement. That does not render the use of the statement “against him” in law because law requires him to tell the truth, the whole truth and nothing but the truth before the Commission also and implies that he will be prosecuted for perjury if he tells lies.” (*State of Maharashtra v. Ibrahim Mohd.*, 1978 Cri LJ 1157 at p. 1160).”

225. This line of reasoning also found favour with the Assam* High Court in *State of Assam v. Suprabhat Bhadra*, 1982 Cri LJ 1672. But Madhya Pradesh High Court in *Puhugram v. State of M.P.*, 1968 MPLJ 629 has taken a contrary view. That High Court said that the language of Section 6 is plain enough to show that the statement made by a person before the Commission of Inquiry cannot be used against him for the purpose of cross-examination.

226. It is urged that even if the words “used against” mean preventing the use of the statement for the purpose of contradiction as required under Section 145 of the Evidence Act, there are other provisions by which the previous statement could be looked into for productive use without confronting the same to the witness. Reference is made to the first part of Section 145, sub-sections (1) and (2) of Section 146 as well as Sections 157 and 159 of the Evidence Act. It is also said that the term “used against” in Section 6 was not intended to be an absolute bar for making use of such statement in subsequent proceedings. The learned Additional Solicitor General, on the other hand, states that Section 6 was intended to be a complete protection

*Gauhati High Court.....Ed.

to persons against the use or utility of their statements in any proceedings except in case of prosecution for perjury. Such protection is necessary for persons to come and depose before the Commission without any hesitation. Any dilution of that protection, it is said, would defeat the purpose of the Act itself.

227 Before I come to consider the arguments put forward by each side, I venture to refer to some general observations by way of approach to the questions of construction of statutes. In the past, the Judges and lawyers spoke of a 'golden rule' by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the Court to intervene by its innovation.

228. During the last several years, the 'golden rule' has been given a go-by. We now look for the 'intention' of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

229. Let me here add a word of caution. This adventure, no doubt, enlarges our discretion as to interpretation. But it does not imply power to us to substitute our own notions of legislative intention. It implies only a power of choice where differing constructions are possible and different meanings are available.

230. For this purpose, we call in external and internal aids:

External aids are : the Statement of Objects and Reasons when the Bill was presented to Parliament, the reports of the Committee, if any, preceded the Bill, legislative history, other statutes in *pari*

materia and legislation in other States which pertain to the same subject-matter, persons, things or relations.

Internal aids are : Preamble, Scheme, enacting parts of the statutes, rules of languages and other provisions in the statutes.

231. The Act may now be analysed. The Act is a short one consisting of 12 Sections. Section 3 provides power to the appropriate Government to appoint a Commission of Inquiry for the purposes of making an inquiry into any definite matter of public importance. Section 4 confers upon a Commission of Inquiry certain powers of a Civil Court (for example, summoning and enforcing the attendance of witnesses and examining them on oath, etc.) Section 5 empowers the appropriate Government to confer some additional powers on a Commission of Inquiry. Section 5(a) authorises the Commission to utilise the service of any officer or investigating agency for the purpose of conducting any investigation pertaining to inquiry entrusted to the Commission. Section 6 confers upon persons giving evidence before the Commission protection from prosecution except for perjury. The other sections are not important for our purpose except Section 8. Section 8 provides procedure to be followed by the Commission. The Commission is given power to regulate its own procedure and also to decide whether to sit in public or in private.

232. The statement of Objects and Reasons of the original Act reads:

“It is felt that there should be a general law authorising Government to appoint an inquiring authority on any matter of public importance, whenever considered necessary, or when a demand to that effect is made by the legislature and that such law should enable to inquiring authority to exercise certain specific powers including the powers to summon witnesses, to take evidence on oath and to compel persons to furnish information. The bill is designed to achieve this object.”

233. It will be clear from these provisions that the Act was intended to cover matters of public importance. In matters of public importance it may be necessary for the Government to fix the responsibility of individuals or to kill harmful rumours. The ordinary law of the land may not fit in such cases apart from it is time consuming.

234. The Commission under our Act is given the power to regulate its own procedure and also to decide whether to sit in camera or in public. A commission appointed under the Act does not decide any dispute. There are no parties before the Commission. There is no

list. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial. The Commission more often may have to give assurance to persons giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such an assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceeding they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the nuggets of truth from the obscure horizon. The purpose for which the Commission is constituted may be defeated.

235. The Court should avoid such construction to section 6 which may stultify the purpose of the Act. Section 6 must on the other hand, receive liberal construction so that the person deposing before the Commission may get complete immunity except in a case of prosecution for perjury. That is possible if the word "against" used in S. 6 is properly understood. The meaning given in Black's Law Dictionary supports such construction (at p. 57) :

"Against – Adverse to, contrary..... Sometimes meaning 'upon', which is almost, synonymous with word 'on'...."

236. Apart from that, it may also be noted that Section 6 contains only one exception. That is a prosecution for giving false evidence by such statement. When the Legislature has expressly provided a singular exception to the provisions, it has to be normally understood that other exceptions are ruled out.

237. The view that I have taken gets confirmation from the report of the Royal Commission on Tribunals of Inquiry (1966). Before referring to the report, it will be useful to have before us, the relevant provisions of the English statutes which are not materially dissimilar to our Act. There are two English statutes which may be looked into: (i) The Special Commission Act, 1888; and (ii) The Tribunals of Inquiry (Evidence) Act, 1921. Section 9 of the Special Commission Act, 1888 provides :

"9....A witness examined under this Act shall not be excused from answering any question put to him on the ground of any privilege or on the ground that the answer thereto may criminate or tend to criminate himself. *Provided that no evidence taken under this Act shall be admissible against any person in any civil*

or criminal proceeding except in the case of a witness accused of having given false evidence in any inquiry under this Act...."

(Emphasis supplied)

238. Section 1(3) of the Tribunals of Inquiry (Evidence) Act, 1921, provides :

"A witness before any such tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session."

239. Section 9 of the Special Commission Act, 1888 protects the witness in every respect except in a prosecution for giving false evidence by such statement. It provides that the evidence given by him shall be inadmissible in any civil or criminal proceedings. Section 1(3) of the Tribunals of Inquiry (Evidence) Act, 1921 provides only a limited or partial immunity to a witness. It is similar to the immunity afforded to a witness before the High Court or the Court of Session.

240. In 1966, the Royal Commission on Tribunals of Inquiry was constituted under the Chairmanship of the Rt. Hon. Lord Justice Salmon. The Commission was appointed to review the working of the Tribunals of Inquiry (Evidence) Act, 1921, and to consider whether it should be retained or replaced by some other provision. The Commission was also authorised to suggest any changes in the Act as are necessary or desirable; and to make recommendations. The Royal Commission in its report at para 63 recommended :

(vii): Further Immunity:

63. "Section 1(3) of the Act of 1921 provides that a witness before any Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session. This means that he cannot be sued for anything he says in evidence e.g. if he says "A is a liar. His evidence is untrue." A cannot sue him for defamation. It does not mean however that his answer as a witness cannot be used in evidence against him in any subsequent civil or criminal proceedings. We consider the witness's immunity should be extended so that neither his evidence before the Tribunal, nor his statement to the Treasury Solicitor, nor any documents he is required to produce to the Tribunal, shall be used against him in any subsequent civil or criminal proceedings except in criminal proceedings in which he is charged with having given false evidence before the Tribunal or conspired with or procured others to do so. This extension of the witness's immunity would bring the law in this

country into line in this respect with similar provision in the legislation of Canada, Australia and India and indeed with S. 9 of the Special Commission Act, 1888. It would also, in our view, be of considerable assistance in obtaining relevant evidence, for persons may be chary of coming forward for fear of exposing themselves to the risk of prosecution or an action in the civil courts. Moreover, the suggested extension of the immunity would make it difficult for a witness to refuse to answer a question on the ground that his answer might tend to incriminate him. Thus not only would the witness be afforded a further measure of protection but the Tribunal would also be helped in arriving at the truth."

241. The Royal Commission appears to have thoroughly examined the provisions as to immunity to witnesses in the legislations of Canada, Australia and India and S. 9 of the Special Commission Act, 1888. The Commission has stated that the immunity provided to witnesses under S. 1(3) of the Act, 1921 is insufficient for the purpose of advancing the object of the Act. It should be extended so that the statement of a witness before the Tribunal shall not be used against him in any subsequent civil or criminal proceedings except in a prosecution for perjury by giving false evidence before the Tribunal. The extension of such immunity, according to the Royal Commission, would bring S. 1(B) of the Act, 1921 into line with the similar provisions in the legislations of Canada, Australia and India. The legislation in India is the Commission of Inquiry Act, 1952 with which we are concerned. It is apparent that the Royal Commission was of opinion that S. 6 of our Act provides complete protection to witnesses in terms of S. 9 of the Special Commission Act, 1888. It means that the statement given before a Commission shall not be admissible against the person in any subsequent civil or criminal proceeding save for perjury.

242. There is, therefore much to be said for the observation made in Dalmia's case (AIR 1958 SC 538) and indeed that is the proper construction to be attributed to the language of S. 6 of the Act. I respectfully affirm and re-emphasise that view.

243. It is needless to state that the said decisions of the High Courts of Bombay and Assam are incorrect and they stand overruled.

244. Having reached this conclusion, it is strictly unnecessary to fall back on the other contention raised by counsel for the appellants.

245. Let us now move on to the merits of the case against each of the accused. But, before proceeding to consideration of the merits, it will be appropriate to have regard to principles and precedents followed by this Court while dealing with an appeal under Art. 136

of the Constitution. There is a string of decisions laying down those principles right from 1950. In *Pritam Singh v. The State*, AIR 1950 SC 169, Fazal Ali, J. said (at p. 170):

“It would be opposed to all principles and precedents if we were to constitute ourselves into a third Court of fact and, after reweighing the evidence, come to a conclusion different from that arrived at by the trial Judge and the High Court.”

246. In *Hem Raj v. State of Ajmer*, 1954 SCR 1133 : (AIR 1954 SC 462), M.C. Mahajan, C.J. had this to say (at p. 1134):

“Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under Art. 136(1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for.”

247. More recently, in *Bhoginbhai Hirjibhai v. State of Gujarat*, AIR 1983 SC 753. Thakkar, J., recounted (at p. 755):

“A concurrent finding of fact cannot be reopened in an appeal, unless it is established: first that the finding is based on no evidence or; second, that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or thirdly, the finding is based and built on inadmissible evidence, which evidence if excluded from vision, would negate the prosecution case or substantially discredit or impair it or; fourthly, some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded or wrongly discarded.”

248. Bearing in mind these principles, let me take up the case of *Balbir Singh* (A-2) first for consideration :

Balbir Singh:

249. He was an officer of the Delhi Police in the cadre of Sub-Inspectors. He was posted on duty at the PM's residence. He was

not on duty in the morning of October 31, 1984. His duty was to commence in the evening on that day at the in-gate of Akbar Road. When reported for duty, in the usual course, he was asked to go the security police lines. At about 3 a.m. on November 1, 1984 he was awakened from his sleep and his house was searched by SI, Mahipal Singh (PW 60), Constable Hari Chand (PW 17) and Inspector Shamshir Singh. Nothing except a printed book on Sant Bhindranwale (Ex. PW 17/A) was recovered. At about 4 a.m., he was taken to Yamuna Velodrome. He was kept there till late in the evening when he was released from, what Kochar (PW 73) says, '*de facto* custody'. On December 3, 1984, he was said to have been arrested at Najafgarh bus-stand. On December 4, 1984, he was produced before the Magistrate, who remanded him to police custody. Thereafter, he expressed his desire to make a confession. But when produced before the Magistrate, he refused to make a statement -- confessional or otherwise. He was tried along with the other accused for having entered into a criminal conspiracy to commit the murder of the Prime Minister, Mrs. Indira Gandhi. He was convicted under S. 302 read with S. 120-B, I.P.C. and sentenced to death.

250. The charge-sheet contains the following accusations against Balbir Singh:

That Balbir Singh, like other accused, had expressed his resentment openly, holding Smt. Indira Gandhi responsible for the "Blue Star Operation". He was planning to commit the murder of Smt. Indira Gandhi. He discussed his plans with Beant Singh (deceased), who had similar plans to commit the murder. He also shared his intention and prompted accused Satwant Singh to commit the murder of Smt. Indira Gandhi and finally discussed the matter with him on October 30, 1984.

251. In the first week of September 1984, a falcon (Baaj) happened to sit on a tree near the main Reception of the Prime Minister's house at about 1.30 p.m. Balbir Singh spotted the falcon. He called Beant Singh there. Both of them agreed that it had brought a message of the Tenth Guru of the Sikhs and they should do something by way of revenge of the "Blue Star Operation". Thereafter, they performed 'Ardas' then and there.

252. These accusations are sought to be established by the testimony of SI, Madan Lal Sharma (PW 13), Constable Satish Chander Singh (PW 52), SI, Amarjit Singh (PW 44) and the confession of Satwant Singh (Ex. PW 11/C). The prosecution also strongly rely upon a document described as "memorandum of events" (Ex. PW 26/B) said to have been recovered upon the arrest of Balbir Singh on

December 3, 1984. His leave applications (Ex.PW 26/E-1 to E-5) and his post-crime conduct as to absconding are also relied upon.

253. The case of Balbir Singh is that the document Ex. PW 26/B was not recovered from his possession as made out by the prosecution. His arrest at Najafgarh bus-stand was make believe arrangement. He was not arrested there and indeed he could not have been arrested, since he was all along under police custody right from the day when he was taken to Yamuna Velodrome on November 1, 1984. He was not absconding and the question of absconding did not arise when he was not released at all. No question was put to him under S. 313 examination that he had absconded. It is argued that the conclusions of the High Court on all these matters are apparently unsustainable.

254. Before examining these contentions, it will be better to dispose of the point common to this accused and Kehar Singh (A3) relating to the validity of sentence of death awarded to them.

255. It is urged that there was no charge against the accused under S. 109 of IPC and without such a charge, they are liable to be sentenced only for the offence of abetment and not for the murder. Reliance is placed on the provisions of S. 120-B, IPC which provides, *inter alia*, that a party to a criminal conspiracy shall be punished in the same manner as if he had abetted such offence. The contention, in my opinion, is really ill-founded. It overlooks the vital difference between the two crimes : (i) abetment in any conspiracy, (ii) criminal conspiracy. The former is defined under the second clause of S. 107 and the latter is under S. 120-A. Section 107, so far as it is relevant, provides :

“107. A person abets the doing of a thing,

Firstly.....

Secondly -- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.....”

Section 109 provides :

“Whoever abets any offence, shall, if the act abetted is committed in consequence of the abetment and no express provision is

made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.”

256. Criminal conspiracy is defined under S. 120-A:

“120-A. When two or more persons agree to do, or cause to be done –

(1) an act, which is not illegal by illegal means, such agreement is designated a criminal conspiracy;

* * * *

Punishment for criminal conspiracy is provided under S. 120-B:

“120-B(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such conspiracy, be punished in the same manner as if he had abetted such offence.

(2) * * * *

257. The concept of criminal conspiracy will be dealt with in detail a little later. For the present, it may be sufficient to state that the gist of the offence of criminal conspiracy created under S. 120-A is a bare agreement to commit an offence. It has been made punishable under S. 120-B. The offence of abetment created under the second clause of S. 107 requires that there must be something more than a mere conspiracy. There must be some act or illegal omission in pursuance of that conspiracy. That would be evident by the wordings of S. 107. (Secondly) : “engages in any conspiracy...for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy...” The punishments for these two categories of crimes are also quite different. Section 109, IPC is concerned only with the punishment abetments of for which no express provision is made under the Indian Penal Code. A charge under S. 109 should, therefore, be along with some other substantive offence committed in consequence of abetment. The offence of criminal conspiracy is, on the other hand, an independent offence. It is made punishable under S. 120-B for which a charge under S. 109, IPC is unnecessary and indeed, inappropriate. The following observation of Das, J., in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, 1962 Supp (2) SCR 297 at p. 320; (AIR 1962 SC 876 at p. 886) also supports my view :

“Put very briefly, the distinction between the offence of abetment under the second clause of S.107 and that of criminal conspiracy under S.120-A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence.

So far as abetment by conspiracy is concerned, the abettor will be liable to punishment under varying circumstances detailed in Ss. 108 to 117. It is unnecessary to detail those circumstances for the present case. For the offence of criminal conspiracy it is punishable under S. 120-B.”

258. This takes me back to the other contentions specifically urged on behalf of Balbir Singh. Of the evidence relied upon by the prosecution, the document Ex. PW 26/B is said to be the most important. The High Court has accepted it “as revealing a coherent story of participation of the accused in the conspiracy”. The High Court also said: “the document shows beyond doubt that Balbir Singh was all along in the picture and associated with Beant Singh and Satwant Singh”. Before us, the criticisms against this document are various and varied. It may be stated and indeed cannot be disputed that the genuineness of the document is inextricably connected with the arrest and search of the accused at Najafgarh Bus Stand. The document was recovered from the accused upon arrest and search made under S. 51 of the Code. If the arrest cannot carry conviction then the recovery automatically falls to the ground. Not merely that, even the allegation that the accused had absconded vanishes to thin air.

259. The police at the earliest moment suspected Balbir Singh as a person involved in the conspiracy to murder the Prime Minister. After midnight, they arrived at his residence. They knocked on the door and made him to get up from his bed. They searched his house and found nothing incriminating against him. They took him to Yamuna Velodrome doubtless upon arrest. The plain fact is that Balbir Singh was kept under custody throughout the day. At 6 P.M., he was seen at the Yamuna Velodrome by Rameshwara Singh (PW 51). The case of the prosecution however, is that Balbir Singh was released thereafter and he was absconding till he was arrested on December 3, 1984 at Najafgarh Bus Stand. The accused challenges this version. The Courts

do not interfere in the discretion of the police in matters of arrest, search and release of persons suspected in criminal cases. But the courts do insist that it should be done according to law. If the prosecution says that the accused was released from custody and the accused denies it, it will be for the prosecution to place material on record in support of the version. Admittedly, there is no record indicating the release of Balbir Singh from Yamuna Velodrome. The explanation given is that Yamuna Velodrome being not a Police Station, registers were not maintained to account for the incoming and outgoing suspects. It is hardly an explanation where life and death questions are involved.

260. Again, the question of absconding by the accused remains unanswered. First, there is no material to lend credence to this serious allegation. Nobody has been asked to search him. No police party has been sent to track him. No procedure contemplated under law has been taken. Second, there is no evidence from which place the accused came and landed at Najafgarh Bus Stand. Kochar (PW 73) has deposed that he had secret information at 2 P.M. on December 3, 1984 that the accused was likely to visit Najafgarh Bus Stand. He went along with Sant Ram (PW 35), Sub-Inspector of Crime Branch. There they saw the accused at the Bus Stand. Before he was arrested, Kochar personally interrogated him at the electricity office near the Najafgarh Bus Stand. The interrogation went on for more than one hour. Yet, Kochar could not locate the place from where the accused came to Najafgarh Bus Stand. Upon arrest, it is said that the police have recovered certain articles including Ex. PW 26/B under the seizure memo (Ex. PW 35/A). But there is no independent witness for the seizure memo. Third, no question as to absconding was put to the accused in the examination under S. 313 of the Code. What was put to him under question No. 52 was that he had remained absent from duty from November 4, 1984 till December 3, 1984. That is not the same thing to ask that the accused had absconded during that period. For that question, the accused replied that he was under police detention from November 1, 1984 till December 3, 1984 and there was no question of his attending the duty during that period. He has also stated that he was formally arrested on December 3, 1984 and till then he was under Police detention.

261. Realising the weakness in this part of the case, learned Additional Solicitor General relied upon the averments in the application moved by the police for remanding the accused to police custody. It was stated in the remand application dated December 4, 1984 that Balbir Singh had absconded and was not available for

interrogation. It was also stated therein that Balbir Singh was arrested at Najafgarh Bus Stand on December 3, 1984. Shri S.L. Khanna, Additional C.M.M., remanded the accused to police custody till December 6. The order of remand was signed by the accused. It is argued that the accused being a police officer did not object to the allegations made against him in the remand application. I do not think that this contention requires serious consideration. The averments in the remand application are only self-serving. The silence of the accused cannot be construed as his admission of those allegations.

262. There is yet another feature to which I should draw attention. The prosecution want to establish the recovery of Ex. PW 26/B from the accused by other contemporaneous document. Reference in this context is made to the Malkana Register of the Tughlak Road Police Station. Entry 986 in the Malkana Register, according to the learned Additional Solicitor General, contains verbatim copy of the seizure memo (Ex. PW 35/A) and it is indicative of the fact that Ex. PW 26/B was recovered from the accused upon his arrest and search. Here again there is some difficulty. There is an endorsement in the Malkana Register stating that the DTC ticket which the accused carried and the paper containing the dates in English (Ex. PW 26/B) were not deposited. Malkana Register, therefore, is of little assistance to the prosecution.

263. In view of these infirmities, the arrest of the accused at Najafgarh Bus Stand does not inspire confidence. This by itself is sufficient to discard the document Ex. PW 26/B. Let me also examine the contents of the document which has been highlighted by the High Court. The document can be taken to be in the handwriting of Balbir Singh to avoid reference to unnecessary evidence. But that in my opinion, does not advance the case of prosecution. The document is a sheet of paper in which we find the following entries :

“June 1984

- Army operation
- felt like killing
- Put on duty outside No. 1, S.J. Road
- Dalip Singh

again at
No.1

S.J. Rd.
July

1984

- Proceeded on leave for 30 days
- Dalip and Varinder Singh visited my house.
- Dalip took me to Gurubaksha's house where Santa Singh also met.

- Dalip Singh and Gurbaksh visited my house
Mavalankar Hall
 - Went to Ghaziabad
 - I visited Gurbaksh Singh's house – for Hemkunt
 - I visited Gurbaksh Singh's house."
 - Back from leave.
- August
1984
- Met Amarjit Singh and Beant Singh
 - Dalip Singh Virender Singh etc. met at Bangla Sahib
 - Mavalankar Hall/ Gurupurab at 3rd week Bangla Sahib
 - Harpal Singh/Virender
 - Beant Singh/Eagle meeting at
 - Beant Singh decision to start
Constructive work
- September
1984
- Visited Gurbaksh Singh's house – Dalip and a
boy Narinde Singh/Virender
 - Leave for 4/5 days
- 26
- 1000 Visited Gurbaksh's house and learned about
the boy
- October
1984
- Narinder Singh
 - Leave for 4/5 days
- 22nd
- Beant Singh
 - leave for 4 days – Dalip Singh and Mohinder
Singh visited
- 28
-
- 30
- Satwant
- 31
-

264. If this document is an incrimination piece of evidence, as the High Court has observed, it is rather baffling why the accused, who was suspected to be a conspirator to murder the Prime Minister of the country, should carry the document wherever he goes and that too at a place where there were reprisal killings. The accused is not a rustic person. He is a Sub-Inspector of Police with several years of service to his credit. He must have investigated so many crimes.

He must have anticipated the danger of carrying incriminating document when he was already suspected to be a party to the deadly conspiracy. Unable to compromise myself with any reason, I sought the assistance of learned Additional Solicitor General. He too could not give any explanation. Indeed, nobody could offer even a plausible explanation for this unusual conduct attributed to the accused. To my mind, to say that the absconding accused – Sub-Inspector was found at a public place in the national capital with an incriminating document which may take him to gallows is to insult the understanding, if not the intelligence, of police force of this country.

265. That is one aspect. The other aspect relates to the assessment of inherent value of the document. A bare reading of the document, as rightly urged for the accused, shows that this is a document composed at one time with the same ink and same writing instrument. The corrections, the fixing of months and dates with the nature of entries therein apparently indicate that the document was not kept as a contemporaneous record of events relating to Balbir Singh. The fact that it was not in the possession of the accused when his house was searched in the early hours of November 1, 1984 also confirms this conclusion.

266. In the document, there is no reference to killing of the Prime Minister. In fact, except for a “felt like killing” in early June as an immediate reaction to the “Blue Star Operation”, even the manifestation of this feeling does not exist anywhere in subsequent part of the document. The document refers to bare meetings, visits of persons, or visiting somebody’s house. It is, however, not possible to find out to whom the document was intended to be used.

267. In the document, Beant Singh is referred to at four places. At one place, there is a reference to Beant Singh with eagle (not falcon). The cross mark of x closely followed by long arrow mark in the document indicates the indecision of the author or somebody is straining his memory. There is no reference to a joint ‘Ardas’ or a message for revenge associated with the appearance of eagle. The entry does not suggest that the author had anything to do with the eagle. It is something between Beant Singh alone and the eagle. It is significant that there is no reference to Beant Singh and his plans to murder the Prime Minister. There is no reference to bombs or grenades associated with the plans to eliminate the Prime Minister before the 15th August, 1984. There is no reference to any commission of any offence. There is no reference about Beant Singh conspiring with Balbir Singh. There is no reference to Kehar Singh at all. If Balbir Singh was a party to the conspiracy with Beant Singh, the date

on which Beant Singh had placed the murder of Mrs. Gandhi, that is, 25 October, 1984 as written in Ex. P.39 ought to have been noted in Ex. PW 26/B. We do not find any reference to that date. There is a cryptic reference to Satwant Singh against 30th October and it must be with reference to the evidence of Constable Satish Chander Singh (PW 52) whose evidence no Court of law could believe. PW 52 was a Sentry in the Prime Minister's security. According to him, Balbir Singh was on duty on October 30, 1984 at a distance of about 5-7 steps from his point of duty. He states that Satwant Singh came to meet Balbir Singh at 8 p.m. on that day. He further states that they talked something in Punjabi which he could not follow, as he did not know Punjabi. The only one entry which makes a reference to killing is the second entry. It refers to "felt like killing". But one does not know who "felt like killing" and killing whom? It may be somebody's reaction to the "Blue Star Operation". If the document is read as a whole, it does not reveal anything incriminating against Balbir Singh.

268. Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Ss. 120-A and 120-B, IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the over-act unessential when the conspiracy is to commit any punishable offence. The English Law on this matter is well-settled. The following passage from Russell on Crime (12 Ed. Vol. 1. 202) may be usefully noted :

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, *per se*, enough."

269. Glanville Williams in the "Criminal Law" (Second Ed. 382) explains the proposition with an illustration:

"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would whip him at the first opportunity. E whipped P. D. was acquitted of conspiracy because there was no agreement for "concert of action", no agreement to "co-operate".

270. Coleridge, J., while summing up the case to Jury in *Regina v. Murphy*, (1937) 173 ER 502 (508) pertinently states:

“I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, “Had they this common design, and did they pursue it by these common means – the design being unlawful?”

271. It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Ss. 120-A and 120-B, IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal by illegal means is the very quintessence of the offence of conspiracy.

272. Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence, direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of

University of Canterbury, New Zealand (Criminal Law Review 1974, 297 at 299) explains the limited nature of this proposition:

“Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties “actually came together and agreed in terms” to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was “a tacit understanding between conspirators as to what should be done.”

273. I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

274. It is suggested that in view of S. 10 of the Evidence Act, the relevancy of evidence in proof of conspiracy in India is wider in scope than that in English Law. Section 10 of the Evidence Act introduced the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. Section 10 reads :

“10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

275. From an analysis of the section, it will be seen that sec. 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such

prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it. It is true that the observations of Subba Rao, J. in *Sardul Singh Caveeshar v. State of Maharashtra*, (1964) 2 SCR 378 : (AIR 1965 SC 682) lend support to the contention that the admissibility of evidence as between co-conspirators would be liberal than in English Law. The learned Judge said (at 390) :

“The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression “in reference to their common intention” is very comprehensive and it appears to have been designedly used to give it a wider scope than the words “in furtherance of” in the English Law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it...”

276. But, with respect, the above observations that the words of Sec. 10 have been designedly used to give a wider scope than the concept of conspiracy in English Law, may not be accurate. This particular aspect of the law has been considered by the Privy Council in *Mirza Akbar v. King Emperor*, AIR 1940 PC 176 at p. 180, where Lord Wright said that there is no difference in principle in Indian Law in view of Sec. 10 of the Evidence Act.

277. The decision of the Privy Council in *Mirza Akbar's* case has been referred to with approval in *Sardul Singh Caveeshar v. State of Bombay*, 1958 SCR 161 at p. 193: (AIR 1957 SC 747 at p. 760) where Jagannadhadas, J., said:

“The limits of the admissibility of evidence in conspiracy case under S. 10 of the Evidence Act have been authoritatively laid down by the Privy Council in *Mirza Akbar v. King Emperor* (*supra*). In that case, their Lordships of the Privy Council held that S. 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence

receivable under S. 10 of the Evidence Act of "anything said, done or written, by any one of such persons" (*i.e.*, conspirators) must be "in reference to their common intention". But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well-known principle above enunciated."

278. In the light of these principles, the other evidence against Balbir Singh may now be considered. The High Court has summarised that evidence (leaving out of account the confession of Satwant Singh and the evidence of Amarjit Singh) as follows:

"Summing up then the evidence against Balbir Singh, leaving out of account for the time being the confession of Satwant Singh and the evidence of Amarjit Singh, the position is as follows: He was an officer on security duty at the PM's house. He knew Beant Singh and Satwant Singh well. He shared the indignation of Beant Singh against Smt. Gandhi for 'Operation Blue Star' and was in a mood to avenge the same. He went on leave from 25-6-84 to 26-7-84. On his return he met Beant Singh and Amarjit Singh. He was present at the occasion of the appearance of the eagle and their association on that date is borne out by Ex. PW 26/B. He is known to have talked to Satwant Singh on 30th October, 1984...."

279. I do not think that the High Court was justified in attaching importance to any one of the aforesaid circumstances in proof of the conspiracy. The High Court first said, Balbir Singh was an officer on security duty at the PM's house. But, like him, there were several Sikh officers on security duty at the PM's house. It was next stated, Balbir Singh knew Beant Singh and Satwant Singh well. Our attention has not been drawn to any evidence to show intimacy between Balbir Singh and Beant Singh or between Balbir Singh and Satwant Singh. The High Court next said that Balbir Singh shared the indignation of Beant Singh against Smt. Gandhi and was in a mood to avenge for the "Blue Star Operation". There is no acceptable evidence in this regard. From the testimony of SI, Madan Lal Sharma (PW 13), all that we could gather is that after the "Blue Star Operation", Balbir Singh was in agitated mood and he used to say that the responsibility of damaging 'Akali Takhat' lies with Smt. Gandhi and it would be avenged by them. This is not to say that Balbir Singh wanted to take revenge against the Prime Minister along with Beant

Singh. The High Court did not take into consideration such resentment expressed by Kehar Singh (A-3) and indeed it would be proper not to take notice of such general dissatisfaction. It is not an offence to form one's own opinion on governmental action. It is on record that some members of the Sikh community felt agitated over the "Blue Star Operation". The resentment was also expressed by some of the Sikh employees of the Delhi Police posted for PM's security. In fact, the chargesheet against all the accused is founded on those averments. Amarjit Singh (PW 44) specifically refers to this in the course of his evidence. Resentment of the accused on "Blue Star Operation" should, therefore, be excluded from consideration. The High Court next depended upon the earned leave taken by Balbir Singh for the period from June 25 to July 26, 1984. The High Court rightly did not give significance to casual leave applications of Balbir Singh (Ex. PW 26/E-1 to E-5). I fail to see why taking of earned leave should assume importance. There is no material that Balbir Singh took earned leave for any sinister purpose or design. There is no evidence that during the said period, he met Beant Singh or anybody else connected with the conspiracy. It is, therefore, totally an innocuous circumstance. The High Court next said that Balbir Singh, on his return from leave, met Beant Singh and Amarjit Singh. No other specific meeting has come to light except the meeting referred to by Amarjit Singh (PW 44) which I will presently consider. The High Court lastly relied upon the act of offering 'Ardas' to falcon on its appearance at the PM's house in the first week of September, 1984. This is also from the evidence of Amarjit Singh (PW-44). Assuming that falcon did appear and sat on a tree in the PM's house and that Beant Singh and Balbir Singh did offer 'Ardas' on the occasion, there is, as the High Court has observed, "nothing unusual or abnormal about the incident". The sanctity of the falcon as associated with the Tenth Guru is not denied. They offered 'Ardas' in the presence of so many class IV employees in the PM's house. The last act of Balbir Singh, referred to by the High Court, was his meeting with Satwant Singh on October 30, 1984. That has been referred to by Satish Chander Singh (PW 52), whose evidence as earlier seen has got only to be referred to be rejected. In my opinion, all the facts and circumstances above recited are either irrelevant or explainable. No guilty knowledge of the contemplated assassination of the Prime Minister could be attributed to Balbir Singh on those facts and circumstances.

280. It now remains to be seen whether the evidence of Amarjit Singh (PW 44) is acceptable or whether it is inherently infirm and insufficient. There are grave criticisms against this witness. I will only

examine some of them. The relationship between him and Balbir Singh was anything but cordial. It was indeed casual. They were not on visiting terms. Amarjit Singh was not even invited to attend the marriage of Balbir Singh. That was the type of connection that existed between them. Yet, Amarjit Singh deposes that Balbir Singh and Beant Singh used to keep him informed regularly about their plan of action to murder the Prime Minister. He wants the court to believe that he was in a position to advise the conspirators against any such move. It is too difficult to accept this self-styled adviser. As a faithful security officer, he was duty bound to alert his superiors about any danger to the Prime Minister. He knew that responsibility as he admits in his evidence, but failed to perform his duty. To place reliance on his testimony would be to put a premium on his irresponsibility.

281. The police have recorded three statements from Amarjit Singh on three different dates. The first statement (Ex. PW 44/DA) was recorded on November 24, 1984. After 25 days, the second statement (Ex. PW 44/DB) was recorded on December 19, 1984. Both were under Sec. 161 of the Code. Again on December 21, 1984, the third statement (Ex. PW 44/A) under Sec. 164 of the Code came to be recorded. In the first statement, there is no express involvement of Balbir Singh. The second statement, according to the witness, was recorded at his own instance. He deposes before the Court:

"It did not occur to me that assassination was the handiwork of Balbir Singh and Kehar Singh after I had learnt about the firing and death of Smt. Indira Gandhi. I on recalling earlier talk realised on 24-11-1984 that the assassination of Mrs. Indira Gandhi was the handiwork of Shri Balbir Singh and Shri Kehar Singh. Then I went to Shri R.P. Sharma who recorded my statement on 24-11-1984. *It is correct that I recall things bit by bit. It is correct that there is a difference in my statements PW 44/DA and PW 44/DB.* It is because many questions were not put to me earlier and, therefore, I did not mention them in my first statement."

He thus admits that there is difference between the first and second statements. But the High Court said that there is no improvement or after-thought so as to implicate Balbir Singh. The approach of the High Court appears to be incorrect. Amarjit Singh (PW 14) states before the Court :

".....In the first week of August, 1984, I had a talk with Beant Singh. Then he told me that he would not let Mrs. Indira

Gandhi unfurl the flag on 15th August. Shri Balbir Singh also used to tell me that if he could get remote control bomb and his children are sent outside India, then he also could finish Mrs. Indira Gandhi. I used to think that he was angry and I used to tell him that he should not think in these terms.....

* * * *

In the third week of October, 1984, Balbir Singh told me that Beant Singh and his family have been to Golden Temple along with Kehar Singh, her Phoopha. He further told that SI Beant Singh and Constable Satwant Singh had taken Amrit in Sector VI, R.K. Puram, New Delhi at the instance of Shri Kehar Singh."

282. In the first statement (Ex. PW 44/DA), there is no reference to Balbir Singh telling the witness that if he could get remote control bomb and his children are sent outside India, he could also finish Mrs. Indira Gandhi. There he has stated :

"In the end of September, 1984, SI Balbir Singh met me once in the Prime Minister's house and told me that Beant Singh wanted to kill the Prime Minister before 15th of August. He (Beant singh) had agreed to kill her (Prime Minister) with a grenade and remote control but this task was to be put off because the same could not be arranged. Actual words being 'In Dono Cheezon Ka Intezam Nahim Ho Saka is Liye Batt Tal gaye'."

283. Again in the first statement (Ex. PW 44/DA) what he stated was:

"In the third week of October, 1984, Beant Singh, SI, met me and told me that he had procured one constable, actual words being : 'October, 1984 Ke Teesre Hafte Mein Beant Singh Mujhe Mila Aur Usne Bataya Ke Usne Ek Sipahi Pataya Hai' and that now both of them would put an end to Smt. Indira Gandhi's life very soon."

284. The discrepancies between the first version and the evidence in Court are not immaterial. They are substantial and on material points. The witness is putting the words of Beant Singh into the mouth of Balbir Singh and thereby creating circumstances against the latter.

285. Lastly, the reference is made to the confession of Satwant Singh (Ex. PW 11/C) to support the prosecution version. But it is as much a bad step as others in this case. The confession of a co-accused could be used only to lend assurance to the conclusion on the acceptable evidence against the accused. When by all the testimony in the case, Balbir Singh's involvement in the conspiracy is not established, the confession of Satwant Singh cannot advance the prosecution case. Even otherwise, the reference in the confession as to the conspiracy between Balbir Singh and Beant Singh was not within the personal knowledge of Satwant Singh. He refers to Beant Singh consulting Balbir Singh and "advising" to kill PM. It is not clear who told him and when? Such a vague statement is of little use even to lend assurance to any acceptable case against Balbir Singh.

286. In my judgement, the evidence produced by the prosecution against Balbir Singh is defective as well as deficient. It is safer, therefore, to err in acquitting than in convicting him.

Kehar Singh (A-3):

287. Kehar Singh was an Assistant in the Directorate General of Supply and Disposal, New Delhi. The case against him is : That he was a religious fanatic. He had intense hate against Mrs. Indira Gandhi for causing damage to the Akal Takhat by the "Blue Star Operation". He was in a position to influence Beant Singh, since he was the uncle of Beant Singh's wife called as 'Poopha'. He converted Beant Singh and through him Satwant Singh to religious bigotry. He made them to undergo "Amrit Chakhan Ceremony" on October 14, 1984 and October 24, 1984 respectively at Gurudwara, R.K. Puram, New Delhi. He also took Beant Singh to Golden Temple, Amritsar on October 20, 1984.

288. The prosecution, in support of the case that he was a party to the conspiracy to murder Mrs. Indira Gandhi, relied on the following :

- (1) Ujagar Sandhu incident; (2) Darshan Singh incident;
- (3) Amrit Chakhan ceremony; and (4) Amritsar trip.

289. Besides, the prosecution relied upon his reaction to "Blue Star Operation", attendance in office, post-crime conduct, and a pamphlet in "Gurumukhi" captioned "Indira De Sikh". The recovery of gold 'Kara' and gold ring belonging to Beant Singh from the residence of this accused was also depended upon.

290. Both the courts have generally accepted the prosecution version and held that the conspiracy to assassinate Mrs. Indira Gandhi

was hatched out by all the three persons, that is, Kehar Singh, Beant Singh and Satwant Singh.

291. I will first try to eliminate the irrelevant evidence against this accused. The prosecution examined three witnesses to prove the reaction of the accused to "Blue Star Operation" : O.P. Sharma (P/W 31), Darshan Singh Jaggi (PW 32), and Krishan Lal Uppal (PW 33). These witnesses have testified that Kehar Singh was very unhappy at the consequences of "Blue Star Operation" and he considered that Smt. Gandhi was responsible for the same. In fairness to the accused, it shall be kept out of account for the reasons given by me while discussing the case of Balbir Singh. I shall also exclude from consideration the pamphlet captioned "Indira De Sikh" (Ex. P. 53) and the connected evidence of Raj Bir Singh (PW 54), Bal Kishan Tanwar, ACP (PW 63) and Daya Nand (PW 66). That pamphlet in "Gurumukhi" no doubt, contains vitriolic attack on Mrs. Indira Gandhi. But it was recovered from an open drawer of the office table of Kehar Singh when he was not in office. It is a printed matter. It does not show that Kehar Singh was the author of it. Nor there is any evidence to indicate that Kehar Singh has had anything to do with it.

292. I shall not take notice of "Darshan Singh incident" either. It was alleged to have occurred in the Gurudwara, Moti Bagh, New Delhi, a couple of days before Raksha Bandhan day (August 18, 1984). It appears that there was a kirtan of Prof. Darshan Singh, who spoke very movingly about the consequences of the "Blue Star Operation". Kehar Singh and Beant Singh were said to be present on the occasion. After hearing the speech of Prof. Darshan Singh, Beant Singh was found to be sobbing. Thereupon, Kehar Singh told him that he should not weep, but take revenge. This has been spoken to by Inder Bir Singh (PW 68). This incident has a story behind. In the newspaper 'Tribune' dated November 25, 1984, there was an article (Ex. D. 62/X) written by certain Prabhjot Singh. The article goes by the headline 'Profile of an Assassin'. It was written therein :

"There was a sudden transformation in the thinking of Beant Singh after the Army action. He started accompanying his uncle Kehar Singh, an Assistant in the office of the Director General, Supplies and Disposal to Gurudwara Moti Bagh. In July, a noted Ragi from Punjab performed "virag katha' at the Gurudwara. Beant Singh was moved and reportedly starting crying. It was at this stage, Kehar Singh told him not to cry, but to take "revenge".

293. The investigating agency has admittedly secured that Newspaper well in time. It was preserved in their office file. K.P. Sharma (PW 70) has deposed to this. But he examined PW 68 only on July 3, 1985, that is, after the accused were committed to take their trial. It is said that the news item in *Tribune* is very vague and despite the best efforts, none except PW 68 could be secured till July 3. This is unacceptable. The said article furnishes sufficient leads; like "Virag Katha", noted Ragi, Moti Bagh Gurudwara, the month of July, Kehar Singh and Beant Singh together attending the function, etc. The author of the article is Prabhjot Singh. The investigating officer could have got some more particulars if Prabhjot Singh had been approached. But nobody approached him. Nor anybody from the said Gurudwara has been examined. The function in which the noted Prof. Darshan Singh Ragi participated could not have been an insignificant function. A large number of local people, if not from far off places would have attended the function. No attempt appears to have been made in these directions to ascertain the truth of the version given in the 'Tribune'. PW 68 is a solitary witness to speak about the matter. He claims to know Kehar Singh but not Beant Singh. It is not safe to accept his version without corroboration.

294. Let me now descend to the relevant material against the accused. 'Ujagar Sandhu' incident is relevant and may be taken note of. The incident is in connection with celebration of the birthday of a child in Sandhu's house to which Kehar Singh alone was invited but not Beant Singh. Kehar Singh, however, persuaded Beant Singh and Mrs. Bimla Khalsa (PW 65) to accompany him. They went together and participated in the function. Bimla Khalsa swears to this. It is common ground that there were inciting and provoking Bhajans in that function. The provoking Bhajans were in the context of destruction of Akal Takhat by the "Blue Star Operation". But it is argued that there is no evidence that Beant Singh and his wife were deliberately taken by Kehar Singh to expose them to provocative Bhajans. There may not be any such evidence, but it may not be non-sequitur when one takes an uninvited guest to such function in the circumstances of this case.

295. The incident on October 17, 1984 in the house of Beant Singh, to which Bimla Khalsa testifies, is more positive. It plainly indicates that Kehar Singh and Beant Singh were combined and conspiring together. She has deposed that Kehar Singh came to her house and was closed with Beant Singh on the roof for about 18/15 minutes. There was hush-hush talk between them which could not be overheard by Bimla Khalsa, as she was in the kitchen. That evoked

suspicion in her mind. She did consider if I may use her own words "their talk as something secret". There, then, she enquired from Kehar Singh "as to what they were talking thereupon?" Kehar Singh replied that the talks were "with regard to making somebody to take Amrit". Bimla Khalsa remarked : "that taking Amrit was not such a thing as to talk secretly." She was perfectly right in her remark. There cannot be a secret talk about Amrit taking ceremony. It is a religious function. Kehar Singh might have realised that it would be difficult to explain his conduct without exposing himself. He came with cryptic reply: "There was nothing particular".

296. Bimla Khalsa further deposed that in the same evening Kehar Singh took meals in her house along with her husband and Satwant Singh who later joined them.

297. Apparently, Beant Singh did not like his wife enquiring about the exchange of secret information between him and Kehar Singh. On October 20, 1984, when they were in Amritsar, Beant Singh had asked his wife why she had questioned Kehar Singh as to what they were talking on the roof on October 17, 1984.

298. It may be pertinently asked : Why did Kehar Singh and Beant Singh suppress the conversation? Why did Kehar Singh give such reply to Bimla Khalsa? If the conversation related to taking of Amrit by Beant Singh or his wife, there was no necessity to have a secret talk, since Beant Singh and Bimla Khalsa had already taken Amrit by then. Kehar Singh knew it and in fact he had accompanied Bimla Khalsa for that ceremony. The said conversation, as the High Court has observed could be only to further the prosecution of the conspiracy. Satwant Singh later joining them for meals lends credence to this conclusion.

299. An endeavour is made to impeach Bimla Khalsa, first, on the ground that she turned hostile, and second, that she was examined belatedly. I must state that merely because she turned hostile, her evidence cannot be discarded. That is a well accepted proposition. She has no axe to grind against any person. She gains nothing by telling falsehood or incorrect things against Kehar Singh. She has revealed what she was told and what she had witnessed on October 17, 1984 in her own house. There is, therefore, no reason to discard that part of her testimony. As to the second complaint, it is true that the police did not record her statement immediately after the incident. That is understandable. She has lost her husband. She was in immeasurable grief. She ought to be allowed time to compose herself. Both the objections raised against her testimony are, therefore, not sound.

300. Beant Singh appears to have planned to murder Mrs. Gandhi on October 25, 1984. It has been indicated by his own writing on the text of the 'Vak' recovered on search of his house at 3 AM on November 1, 1984. Balraj Nanda (PW 16) who searched his house along with others recovered a book under the title "Bhindranwale Sant" (Ex. P. 36). Inside the book, a copy of 'Hukamnama' (Vak) dated October 13, 1984 written in saffron ink was found (Ex. P. 39). On the reverse of Ex. P. 39), the following two dates are written : "25-10-1984 I Yes. 26-10-1984 Yes 8 AM to 10 AM."

301. This writing has been proved to be that of Beant Singh. It has been established by the evidence of Bimla Khalsa and the testimony of other witnesses. Bimla Khalsa has stated that Ex. P. 39 is in the handwriting of Beant Singh on both sides thereof. The evidence of P.C. Maiti (PW 24), Additional Director, Institute of Criminology and Forensic Science, New Delhi and S.K. Sharma (PW 25), Assistant Director (Documents) in the same Institute also confirms that fact.

302. Against this background, the visit to Amritsar assumes importance. On October 20, 1984, Kehar Singh and Beant Singh along with their family members went to Amritsar. There they stayed in the house of one Mr. M.R. Singh (PW 53). Bimla Khalsa states that they reached Amritsar at 2-3 P.M. and went to Darbar Sahib Gurudwara in the same evening. While ladies and children were listening to kirtan, Beant Singh and Kehar Singh went to see the Akal Takht. Bimla Khalsa wanted to accompany them to see the Akal Takht, but she was told to see the same on the next morning. What happened on the next day is still more curious. In the early hours, PW 53 was woken up by Kehar Singh and told that he would attend "Asa-ki-War Kirtan" in Darbar Sahib. So stating, he went along with Beant Singh. The ladies and children were left behind. They went to Darbar Sahib at 8 A.M. along with PW 53. They returned home at 11 A.M. and had lunch with PW 53. Beant Singh and Kehar Singh did not join them for lunch, nor they returned to the house of PW 53. PW 53 took the ladies and children to Railway Station to catch the train for the return journey. Beant Singh and Kehar Singh appeared there and all of them left by the same train. What is significant to note herein is about the relative character of Kehar Singh and Beant Singh. Even at the most sacred place they remained isolated from their wives and children. No wonder, birds of the same feather fly together.

303. It is suggested that Kehar Singh being an elderly person and a devout religious Sikh was keeping company with Beant Singh to dissuade the latter from taking any drastic action against Mrs. Gandhi.

I wish that Kehar Singh had done that and given good advice to Beant Singh. He had the opportunity to bring Beant Singh back to the royal path, but unfortunately, he did nothing of that kind. If he had not approved the assassination of the Prime Minister, Beant Singh would not have grafted Satwant Singh to the conspiracy. Secondly, if Kehar Singh was really interested in redeeming Beant Singh, he would have taken the assistance of Bimla Khalsa. He did not do that even. She was deliberately not taken into confidence. She was in fact kept in darkness even though she was inquisitive to know their secret talk.

304. It is true that there is no substantive evidence from the testimony of Bimla Khalsa that Beant Singh took Amrit on October 14, 1984 at the instance of Kehar Singh. Bimla Khalsa has only stated "I cannot say if on the 14th October, 1984, Beant Singh had taken Amrit at the instance of Kehar Singh in Sector VI, Gurdwara, R.K. Puram, but on the 13th October he was telling me that he was going to take Amrit." The fact, however, remains that Beant Singh took Amrit on October 14, 1984. Kehar Singh was undisputedly present at the ceremony in which Bimla Khalsa took Amrit. It may not be, therefore, unreasonable to state that he must have been present when Beant Singh also took Amrit. The recovery made from his house supports this inference. It is said that while taking Amrit or thereafter, the person is not expected to wear gold ornaments. Beant Singh had gold 'kara' (Ex. P. 27) and ring (Ex. P. 28). These two articles were recovered by the investigating agency from the house of Kehar Singh. That is not disputed before us. Beant Singh must have entrusted the articles to Kehar Singh at the time of his taking Amrit. It also shows the significant part played by Kehar Singh in taking Amrit by Beant Singh.

305. It is true that taking Amrit by itself may not have any sinister significance. It is a religious ceremony and 'Amrit' is taken only to 'lead a life of spartan purity giving up all worldly pleasures and evil habits'. But, unfortunately, the assassins have misused that sacred religious ceremony for ulterior purpose. The post-crime conduct of Kehar Singh is conclusive of his guilt. He was cognizant of all the details of the coming tragedy and waiting to receive the news on that fateful day. That would be clear from the testimony of Nand Lal Mehta (PW 59) who was an office colleague of Kehar Singh. He has deposed that Kehar Singh had met him in the third floor corridor of the office at about 10.45 A.M. on October 31, 1984. By that time, the news of the murderous attack on the Nation's Prime Minister came like a thunderbolt from a clear sky. The messenger had told

that 'somebody' had shot at Mrs. Gandhi. PW 59 then enquired from Kehar Singh as to what had happened. Kehar Singh replied that "whosoever would take confrontation with the Panth, he would meet the same fate." So stating, he went away. It may be noted that at that time, there was no specific information to the outside world whether any Sikh had shot the Prime Minister or anybody else. Unless Kehar Singh had prior knowledge, he could not have reacted with those words.

306. To sum up: His close and continued association with Beant Singh ; his deliberate attempt to exclude Mrs. Bimla Khalsa from their company and conversation; his secret talk with Beant Singh followed by taking meals together with Satwant Singh; his keeping the gold 'kara' and 'ring' of Beant Singh; and his post-crime conduct taken together along with other material on record are stronger as evidence of guilt than even direct testimony. I agree with the conclusion of the High Court that Kehar Singh was one of the conspirators to murder Mrs. Gandhi, though not for all the reasons stated.

Satwant Singh (A-1)

307. He was a constable in the Delhi Police recruited on January 12, 1982. After training, he was posted in the Fifth Battalion of the Delhi Armed Police (DAP). After further commando training, he was posted in the Second Battalion of the DAP. Thereafter, he was posted in the 'C' company of the Battalion at the lines on Teen Murti Lane where he reported for security duty at the Prime Minister's house on July 2, 1983.

308. There are three charges against Satwant Singh:

(1) Section 302 read with Ss. 120-B and 34 IPC for murdering the Prime Minister Mrs. Indira Gandhi; (ii) Section 307 IPC for the attempted murder of Rameshwar Dayal (PW 10); and (iii) Section 27 of the Arms Act.

309. In proof of these charges, the prosecution have examined three eye witnesses to the occurrence. Narain Singh (PW 9), Rameshwar Dayal (PW 10) and Nathu Ram (PW 64). Besides, Sukhvir Singh (PW 3), Raj Singh (PW 15), Deshpal Singh (PW 43) and Ganga Singh (PW 49) have also been examined.

310. On October 31, 1984, in the usual course, Satwant Singh was put on security at Beat No. 4 in the Akbar Road House (not at the TMC Gate). This has been confirmed by the daily diary maintained at Teen Murti (Ex. PW 14/C) (Entry No. 85). Raj Singh (PW 15) has testified to this entry. Satwant Singh was given arm and ammunition. He was issued SAF Carbine (Sten-gun) having Butt No. 80 along

with 5 magazines and 100 live rounds of 9 mm ammunition. In acknowledgment thereof, he has signed the register (Ex. PW 3/A), Sukhvir Singh (PW 3) has deposed to this. With the said arm and ammunition, Satwant Singh left Teen Murti Lines at about 6.45 A.M. to take up his duty at Beat No. 4. But he did not go to that spot. The case of the prosecution is that Satwant Singh had got exchanged his place of duty to carry out the conspiracy he had with Beant Singh to murder Mrs. Gandhi. But, on the other hand, the accused states that he had been "decoyed" to the TMC Gate by certain persons; that he was injured by the cross firing; that he fell down and was not in a position to shoot the Prime Minister or anybody. The fact, however, remains that Satwant Singh got exchanged his place of duty with that of Deshpal Singh (PW 43). It appears that one Head Constable Kishan Lal No. 1109 allowed the sentries to exchange their places since Satwant Singh was suffering from loose motions and TMC Gate being nearer to a latrine. So, Deshpal Singh took up position at Beat No. 4 while Satwant Singh at TMC Gate.

311. Three eye witnesses to the occurrence : (i) Narain Singh; (ii) Rameshwar Dayal; and (iii) Nathu Ram corroborate with each other on all material particulars. They had accompanied the Prime Minister on the fateful day. They were able to see vividly, describe correctly and identify properly the persons who gunned down Mrs. Gandhi. Both the Courts below have accepted them as natural and trustworthy witnesses. Such a conclusion based on appreciation of evidence is binding on this Court in the appeals under Art. 136. I may, however, briefly refer to their evidence.

312. Narain Singh (PW 9) is a Head Constable. He was on duty from 7.30 AM on October 31, 1984. He has deposed that at 8.45 A.M., he came to know that the Prime Minister had to go to No. 1 Akbar Road, to meet certain foreign T.V. representatives. He took up an umbrella and remained ready to follow the Prime Minister. According to him, at 9.10 AM, Smt. Gandhi emerged out of the house followed by Mr. R.K. Dhawan Private Secretary and Nathu Ram (PW 64). He has stated that he moved over to the right side of Mrs. Gandhi holding the umbrella to protect her against the Sun. They proceeded towards the TMC Gate. The TMC Gate was kept open, where Beant Singh was on the left side and Satwant Singh on the right side. When they were about 10 or 11 feet from the TMC Gate, Beant Singh took out his revolver from his right dub and fired at Mrs. Gandhi. Immediately, Satwant Singh also started firing at Mrs. Gandhi with his Sten-gun. Mrs. Gandhi fell down. He threw away the umbrella, took out his revolver and dashed towards Beant

Singh to secure him. He saw Mr. Bhatt, the personal guard of Mrs. Gandhi and ITBP personnel arriving there and securing Satwant Singh and Beant Singh. He noticed that Rameshwar Dayal (PW 10) was also hit by bullets. He has further stated that the Doctor came running, Mrs. Sonia Gandhi too. They lifted Mrs. Gandhi and placed in the rear seat of the escort car that was brought there. Mrs. Gandhi was taken to the AIIMS accompanied by the Doctor and Mrs. Sonia Gandhi on the back seat and Mr. Bhatt, Mr. Dhawan and Mr. Fotedar on the front seat of the car. He also went to the hospital where Kochar (PW 73) came and took his statement. That statement formed the basis of the FIR in this case.

313. There can be little doubt as to the presence of Narain Singh at the spot. His evidence receives full corroboration from the other two eye witnesses. The umbrella (Ex P. 19) which he was holding has been recovered from the place under the seizure memo (Ex. PW 5/H).

314. Rameshwar Dayal (PW 10) is an A.S.I. of Police. He was on security duty at the PM's residence. He was also the water attendant in the pilot car of the Prime Minister. From his evidence, it will be seen that he had gone to the pantry in the PM's house and got thermos flasks with water, napkins and glass. He was informed that the Prime Minister had an engagement with a T.V. Team at the Akbar Road premises. He went there and saw the T.V. Team. He met the gardner and asked for a 'guldasta', but the gardenr said that he would prepare and get it. In the meantime, he saw the Prime Minister coming out of the house proceeding towards Akabr Road premises followed by Mr. R.K. Dhawan and others. He also joined the entourage. Rest of his evidence is identical in terms with that of Narain Singh (PW 9). According to him he ran to shield Mrs. Gandhi, but was hit by bullets. Undisputedly, he had suffered bullet injuries. He was admitted to the AIIMS for treatment. The Medico-legal Certificate (MLC) issued by the AIIMS (Ex. 10/DA) supports his version. No further corroboration is necessary to accept his evidence.

315. Nathu Ram (PW 64) is also an eye witness. He was a dedicated servant of Mrs. Gandhi. He was always with Mrs. Gandhi not only when she was in power but also when she was out of power. His duty was to clean and dust the library-cum-bed room of the Prime Minister and then stand by in attendance. He has deposed that he was informed by Mrs. Gandhi about the change of programme in the morning of October 31 and was asked to ring up to the make-up persons to come. Accordingly, he called the make-up persons at 7.35 A.M.. After Mrs. Gandhi was ready and left the room at about

9.05 A.M., he followed her. He has testified that Mrs. Gandhi was accompanied by Mr. R.K. Dhawan and followed by Narain Singh and Rameshwar Dayal. His evidence as to the relative acts of the two assassins is consistent with the version of PW 9 and PW 10. As a faithful servant, he has helped to lift and carry Mrs. Gandhi to the car. His presence at the spot was most natural. His evidence is simple and straightforward.

316. Ganga Singh (PW 49) has spoken to events that immediately followed the assassination of the Prime Minister. He is a Lance-Naik in the ITBP commando force placed on duty at the PM's residence. When he heard the sound of fire arms from the TMC Gate, he ran to the spot as duty bound. He found Mrs. Gandhi on the ground lying injured. He saw two Sardars out of whom one was in uniform whom he identified in the Court as Satwant Singh. He has deposed that his Inspector Tarsem Singh who also came there made the Sardars hands up. He and other ITBP personnel secured the Sardars and took them to guard room. At the spot, he took possession of ruck-sack contained four magazines of 9 mm carbine, two of which were full (one with 20 bullets and the other with 30 bullets) and two empty.

317. The presence of Satwant Singh at TMC Gate is also not in dispute and indeed it was admitted by him while answering question No. 51(A) in the examination under Sec. 313 of the Code. What is important to notice from the testimony of Ganga Singh is that Satwant Singh when apprehended by him was not injured. He was taken safely to the guard room. He did not receive any bullet injury in the incident with which we are concerned. He must have been shot evidently inside the guard room where he was taken for safe custody by ITBP personnel. The defence put forward by Satwant Singh that he was decoyed to the TMC gate where he received bullet injury is therefore, patently false.

318. The eye witnesses are not strangers to the assassins. They were familiar faces in the security ring of the Prime Minister. Their presence with Mrs. Gandhi at the spot was not accidental, but consistent with their duties. There was no scope for mistaken identity since everything happened in the broad day light. Therefore, the evidence thus far discussed itself is sufficient to bring home the guilt to Satwant Singh on all the charges levelled against him.

319. If necessary, the records contain evidence as to the identification of arms and ammunition entrusted to the assassins. I have already referred to the evidence relating to the sten-gun (Ex. P. 4) and ammunition delivered to Satwant Singh. The sten-gun

along with 25 empties of the sten-gun was recovered from the place of incident under the seizure memo (Ex. PW 5/H). The revolver (Ex. P. 1) delivered to Beant Singh and 5 empties of the revolver were also collected at the spot. Dr. T.D. Dogra (PW 5) while conducting limited post-mortem examination has taken two bullets from the body of Mrs. Gandhi; one from injury No.1 and the other from injury No. 2. These bullets along with the arms recovered from the spot were sent for the opinion of G.R. Prasad (PW 12), Principal Scientific Officer, Ballistic Division, GFSL, New Delhi. PW. 12 has testified that the bullets recovered from the body of Mrs. Gandhi are traceable to the sten-gun and the revolver. Similar is the evidence with regard to the other bullets recovered from the place of incident. The record also contains evidence about the total tally of the bullets fired and the empties collected. It is needless to discuss that evidence here.

320. It is, however, argued for the accused that the finger prints found on the sten-gun were not tested for comparison and the two bullets recovered from the body of Mrs. Gandhi were not examined for the traces of blood or tissues. It is further said that the post-mortem examination conducted by Dr. Dogra ought to have been full and complete to clinch the issues. There is no substance in these contentions. It is not necessary to confirm the finger prints on the sten-gun, as that of the accused when it is proved that sten-gun was delivered to him. The examination of the bullets recovered from the body of Mrs. Gandhi for the traces of blood or tissues is also unnecessary, since one of the bullets taken by the Doctor tallied with the sten-gun (Ex. P. 4). Equally, limited post-mortem examination conducted by Dr. Dogra would not affect the merits of the case. It is not always necessary to have a complete post-mortem in every case. Section 174 of the Code confers discretion to the Police Officer not to send the body for post-mortem examination if there is no doubt as to the cause of death. If the cause of death is absolutely certain and beyond the pale of doubt or controversy, it is unnecessary to have the post-mortem done by Medical Officer. In the instant case, there was no controversy about the cause of death of Mrs. Gandhi. A complete post-mortem of the body was therefore uncalled for.

321. From the aforesaid direct testimony coupled with the other clinching circumstances available on record, there is not even an iota of doubt about the crime committed by Satwant Singh. I agree with the High Court that he is guilty of all the charges. In this view of the matter, it is unnecessary to burden this case by reference to confession of Satwant Singh.

322. This takes me to the question of sentence. Section 354 (3) of the Code, 1973 marks significant shift in the legislative policy of awarding death sentence. Now the normal sentence for murder is imprisonment for life and not sentence of death. The Court is required to give special reasons for awarding death sentence. Special reasons mean specific facts and circumstances obtained in the case justifying the extreme penalty. This Court in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : (AIR 1980 SC 898) has indicated certain guidelines to be applied to the facts of each individual case where the question of imposing death sentence arises. It was observed that in cases where there is no proof of extreme culpability the extreme penalty need not be given. It may be given only in rarest of rare cases, where there is no extenuating circumstance. In *Machhi Singh v. State of Punjab*, (1983) 3 SCR 413 : (AIR 1983 SC 957), this Court again indicated some principles as to what constitute "the rarest of rare cases" which warrant the imposition of death sentence. The High Court has carefully examined these principles and given reasons why in this case, the death sentence alone should be awarded.

323. In my opinion, the punishment measured is deserved. There cannot be two opinions on this issue. The "Blue Star Operation" was not directed to cause damage to Akal Takht. Nor it was intended to hurt the religious feelings of Sikhs. The decision was taken by the responsible and responsive Government in the national interest. The Prime Minister (late) Mrs. Indira Gandhi was, however, made the target for the consequences of the decision. The security guards who were duty bound to protect the Prime Minister at the cost of their lives, themselves became the assassins. Incredible but true. All values and all ideals in life; all norms and obligations are thrown to the winds. It is a betrayal of the worst order. It is the most foul and senseless assassination. The preparations for and the execution of this egregious crime do deserve the dread sentence of the law.

324. Having regard to the views which I have expressed. I too would dismiss the appeals of Kehar Singh and Satwant Singh, but allow the appeal of Balbir Singh by setting aside his conviction and sentence, and acquitting him of all the charges.

325. Before parting with the case, I would like to express my gratitude to counsel *amicus curiae* for their willingness to assist, on behalf of the accused. With their profound learning and experience, they have argued the case remarkably well. I must also place it on record my appreciation about the deep learning and assiduity with which Mr. G. Ramaswami, Additional Solicitor General assisted on behalf of the State. He was extremely fair to the Court as well as to accused.

Order accordingly.

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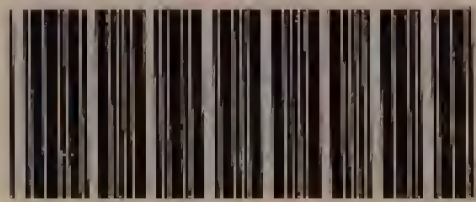
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